

Appendix 3

Excerpt from “Machinery of Democracy,” a Brennan Center Report

APPENDIX C

BRENNAN CENTER TASK FORCE ON VOTING SYSTEM SECURITY, LAWRENCE NORDEN, CHAIR

Excerpted from pp. 8-19

METHODOLOGY

The Task Force concluded, and the peer review team at NIST agreed, that the best approach for comprehensively evaluating voting system threats was to: (1) identify and categorize the potential threats against voting systems, (2) prioritize these threats based upon an agreed upon metric (which would tell us how difficult each threat is to accomplish from the attacker's point of view), and (3) determine, utilizing the same metric employed to prioritize threats, how much more difficult each of the catalogued attacks would become after various sets of countermeasures are implemented.

This model allows us to identify the attacks we should be most concerned about (*i.e.*, the most practical and least difficult attacks). Furthermore, it allows us to quantify the potential effectiveness of various sets of countermeasures (*i.e.*, how difficult the least difficult attack is after the countermeasure has been implemented). Other potential models considered, but ultimately rejected by the Task Force, are detailed in Appendix B.

IDENTIFICATION OF THREATS

The first step in creating a threat model for voting systems was to identify as many potential attacks as possible. To that end, the Task Force, together with the participating election officials, spent several months identifying voting system vulnerabilities. Following this work, NIST held a Voting Systems Threat Analysis Workshop on October 7, 2005. Members of the public were invited to write up and post additional potential attacks. Taken together, this work produced over 120 potential attacks on the three voting systems. They are detailed in the catalogs annexed.²⁰ Many of the attacks are described in more detail at <http://vote.nist.gov/threats/papers.htm>.

The types of threats detailed in the catalogs can be broken down into nine categories:

- (1) the insertion of corrupt software into machines prior to Election Day;
- (2) wireless and other remote control attacks on voting machines on Election Day;
- (3) attacks on tally servers; (4) miscalibration of voting machines; (5) shut off of voting machine features intended to assist voters; (6) denial of service attacks; (7) actions by corrupt poll workers or others at the polling place to affect votes cast; (8) vote buying schemes; (9) attacks on ballots or VVPT. Often, the actual attacks

involve some combination of these categories. We provide a discussion of each type of attack in “Categories of Attacks,” *infra* at pp. 24–27.

PRIORITIZING THREATS: NUMBER OF INFORMED PARTICIPANTS AS METRIC

Without some form of prioritization, a compilation of the threats is of limited value. Only by prioritizing these various threats could we help election officials identify which attacks they should be most concerned about, and what steps could be taken to make such attacks as difficult as possible. As discussed below, we have determined the level of difficulty for each attack where the attacker is attempting to affect the outcome of a close statewide election.

There is no perfect way to determine which attacks are the least difficult, because each attack requires a different mix of resources – well-placed insiders, money, programming skills, security expertise, *etc.* Different attackers would find certain resources easier to acquire than others. For example, election fraud committed by local election officials would always involve well-placed insiders and a thorough understanding of election procedures; at the same time, there is no reason to expect such officials to have highly skilled hackers or first-rate programmers working with them. By contrast, election fraud carried out by a foreign government would likely start with plenty of money and technically skilled attackers, but probably without many conveniently placed insiders or detailed knowledge of election procedures.

Ultimately, we decided to use the “number of informed participants” as the metric for determining attack difficulty. An attack which uses fewer participants is deemed the easier attack.

We have defined “informed participant” as someone whose participation is needed to make the attack work and who knows enough about the attack to foil or expose it. This is to be distinguished from a participant who unknowingly assists the attack by performing a task that is integral to the attack’s successful execution without understanding that the task is part of an attack on voting systems.

The reason for using the security metric “number of informed participants” is relatively straightforward: the larger a conspiracy is, the more difficult it would be to keep it secret. Where an attacker can carry out an attack by herself, she need only trust herself. On the other hand, a conspiracy that requires thousands of people to take part (like a vote-buying scheme) also requires thousands of people to keep quiet. The larger the number of people involved, the greater the likelihood that one of them (or one who was approached, but declined to take part) would either inform the public or authorities about the attack, or commit some kind of error that causes the attack to fail or become known.

Moreover, recruiting a large number of people who are willing to undermine the integrity of a statewide election is also presumably difficult. It is not hard to imagine two or three people agreeing to work to change the outcome of an election. It seems far less likely that an attacker could identify and employ hundreds or thousands of similarly corrupt people without being discovered.

We can get an idea of how this metric works by looking at one of the threats listed in our catalogs: the vote-buying threat, where an attacker or attackers pay individuals to vote for a particular candidate. This is Attack Number 26 in the PCOS Attack Catalog²² (though this attack would not be substantially different against DREs or DREs w/ VVPT).²³ In order to work under our current types of voting systems, this attack requires (1) at least one person to purchase votes, (2) many people to agree to sell their votes, and (3) some way for the purchaser to confirm that the voters she pays actually voted for the candidate she supported. Ultimately, we determined that, while practical in smaller contests, a vote-buying attack would be an exceptionally difficult way to affect the outcome of a statewide election. This is because, even in a typically close statewide election, an attacker would need to involve thousands of voters to ensure that she could affect the outcome of a statewide race.²⁴

For a discussion of other metrics we considered, but ultimately rejected, see Appendix C.

DETERMINING NUMBER OF INFORMED PARTICIPANTS

DETERMINING THE STEPS AND VALUES FOR EACH ATTACK

The Task Force members broke down each of the catalogued attacks into its necessary steps. For instance, Attack 12 in the PCOS Attack Catalog is “Stuffing Ballot Box with Additional Marked Ballots.”²⁵ We determined that, at a minimum, there were three component parts to this attack: (1) stealing or creating the ballots and then marking them, (2) scanning marked ballots through the PCOS scanners, probably before the polls opened, and (3) modifying the poll books in each location to ensure that the total number of votes in the ballot boxes was not greater than the number of voters who signed in at the polling place.

Task Force members then assigned a value representing the minimum number of persons they believed would be necessary to accomplish each goal. For PCOS Attack 12, the following values were assigned:²⁶

Minimum number required to steal or create ballots: 5 persons total.²⁷

Minimum number required to scan marked ballots: 1 per polling place attacked.

Minimum number required to modify poll books: 1 per polling place attacked.²⁸

After these values were assigned, the Brennan Center interviewed several election officials to see whether they agreed with the steps and values assigned to each attack.²⁹ When necessary, the values and steps were modified. The new catalogs, including attack steps and values, were then reviewed by Task Force members. The purpose of this review was to ensure, among other things, that the steps and values were sound.

These steps and values tell us how difficult it would be to accomplish a *single attack in a single polling place*. They do not tell us how many people it would take to change the outcome of an election successfully – that depends, of course, on specific facts about the jurisdiction: how many votes are generally recorded in each polling

place, how many polling places are there in the jurisdiction, and how close is the race? For this reason, we determined that it was necessary to construct a hypothetical jurisdiction, to which we now turn.

NUMBER OF INFORMED PARTICIPANTS NEEDED TO CHANGE STATEWIDE ELECTION

We have decided to examine the difficulty of each attack in the context of changing the outcome of a reasonably close statewide election. While we are concerned by potential attacks on voting systems in any type of election, we are most troubled by attacks that have the potential to affect large numbers of votes. These are the attacks that could actually change the outcome of a statewide election with just a handful of attack participants.

We are less troubled by attacks on voting systems that can only affect a small number of votes (and might therefore be more useful in local elections). This is because there are many non-system attacks that can also affect a small number of votes (*i.e.*, sending out misleading information about polling places, physically intimidating voters, submitting multiple absentee ballots, *etc.*). Given the fact that these non-system attacks are likely to be less difficult in terms of number of participants, financial cost, risk of detection, and time commitment, we are uncertain that an attacker would target *voting machines* to alter a small number of votes.

In order to evaluate how difficult it would be for an attacker to change the outcome of a statewide election, we created a composite jurisdiction. The composite jurisdiction was created to be representative of a relatively close statewide election. We did not want to examine a statewide election where results were so skewed toward one candidate (for instance, the re-election of Senator Edward M. Kennedy in 2000, where he won 73% of the vote³⁰), that reversing the election results would be impossible without causing extreme public suspicion. Nor did we want to look at races where changing only a relative handful of votes (for instance, the Governor's race in Washington State in 2004, which was decided by a mere 129 votes³¹) could affect the outcome of an election; under this scenario, many of the potential attacks would involve few people, and therefore look equally difficult.

We have named our composite jurisdiction "the State of Pennasota." The State of Pennasota is a composite of ten states: Colorado, Florida, Iowa, Ohio, New Mexico, Pennsylvania, Michigan, Nevada, Wisconsin and Minnesota. These states were chosen because they were the ten "battleground" states that Zogby International consistently polled in the spring, summer, and fall 2004.³² These are statewide elections that an attacker would have expected, ahead of time, to be fairly close.

We have also created a composite election, which we label the "Governor's Race" in Pennasota. The results of this election are a composite of the actual results in the same ten states in the 2004 Presidential Election.

We have used these composites as the framework by which to evaluate the difficulty of the various catalogued attacks.³³ For instance, we know a ballot-box stuffing attack would require roughly five people to create and mark fake ballots, as

well as one person per polling place to stuff the boxes, and one person per polling place to modify the poll books. But, in order to determine how many informed participants would be needed to affect a statewide race, we need to know how many polling places would need to be attacked.

The composite jurisdiction and composite election provide us with information needed to answer these questions: *i.e.*, how many extra votes our attackers would need to add to their favored candidate's total for him to win, how many ballots our attackers can stuff into a particular polling place's ballot box without arousing suspicion (and related to this, how many votes are generally cast in the average polling place), how many polling places are there in the state, *etc.* We provide details about both the composite jurisdiction and election in the section entitled "Governor's Race, State of Pennasota, 2007," *infra* at pp 20-27.

LIMITS OF INFORMED PARTICIPANTS AS METRIC

Of the possible metrics we considered, we believe that measuring the number of people who know they are involved in an attack (and thus could provide evidence of the attack to the authorities and/or the media), is the best single measure of attack difficulty; as already discussed, we have concluded that the more people an attacker is forced to involve in his attack, the more likely it is that one of the participants would reveal the attack's existence and foil the attack, perhaps sending attackers to jail. However, we are aware of a number of places where the methodology could provide us with questionable results.

By deciding to concentrate on size of attack team, we mostly ignore the need for other resources when planning an attack. Thus, a software attack on DREs which makes use of steganography³⁴ to hide attack instruction files (*see* "DRE w/ VVPT Attack No.1a" discussed in greater detail, *infra* at pp. 62-65) is considered easier than an attack program delivered over a wireless network at the polling place (*see* discussion of wireless networks, *infra* at pp. 85-91). However, the former attack probably requires a much more technologically sophisticated attacker.

Another imperfection with this metric is that we do not have an easy way to represent how much choice the attacker has in finding members of his attack team.

Thus, with PCOS voting, we conclude that the cost of subverting a routine audit of ballots is roughly equal to the cost of intercepting ballot boxes in transit and substituting altered ballots (*see* discussion of PCOS attacks, *infra* at pp. 77-83). However, subverting the audit team requires getting a specific set of trusted people to cooperate with the attacker. By contrast, the attacker may be able to decide which precincts to tamper with based on which people he has already recruited for his attack.

In an attempt to address this concern, we considered looking at the number of "insiders" necessary to take part in each attack. Under this theory, getting five people to take part in a conspiracy to attack a voting system might not be particularly difficult. But getting five well-placed county election officials to take part in the attack would be (and should be labeled) the more difficult of the two attacks. Because, for the most part, the low-cost attacks we have identified do not necessarily involve well placed insiders (but could, for instance, involve one of many people with access to commercial off the shelf software ("COTS") during development

or at the vendor), we do not believe that using this metric would have substantially changed our analysis.³⁵

Finally, these attack team sizes do not always capture the logistical complexity of an attack. For example, an attack on VVPT machines involving tampering with the voting machine software and also replacing the paper records in transit requires the attacker to determine what votes were falsely produced by the voting machine and print replacement records in time to substitute them. While this is clearly possible, it raises a lot of operational difficulties – a single failed substitution leaves the possibility that the attack would be detected during the audit of ballots.

We have tried to keep these imperfections in mind when analyzing and discussing our least difficult attacks.

We suspect that much of the disagreement between voting officials and computer security experts in the last several years stems from a difference of opinion in prioritizing the difficulty of attacks. Election officials, with extensive experience in the logistics of handling tons of paper ballots, have little faith in paper and understand the kind of breakdowns in procedures that lead to traditional attacks like ballot box stuffing; in contrast, sophisticated attacks on computer voting systems appear very difficult to many of them. Computer security experts understand sophisticated attacks on computer systems, and recognize the availability of tools and expertise that makes these attacks practical to launch, but have no clear idea how they would manage the logistics of attacking a paper-based system. Looking at attack team size is one way to bridge this difference in perspective.

EFFECTS OF IMPLEMENTING COUNTERMEASURE SETS

The final step of our threat analysis is to measure the effect of certain countermeasures against the catalogued attacks. How much more difficult would the attacks become once the countermeasures are put into effect? How many more informed participants (if any) would be needed to counter or defeat these countermeasures?

Our process for examining the effectiveness of a countermeasure mirrors the process for determining the difficulty of an attack: we first asked whether the countermeasure would allow us to detect an attack with near certainty. If we agreed that the countermeasure would expose the attack, we identified the steps that would be necessary to circumvent or defeat the countermeasure. For each step to defeat the countermeasure, we determined the number of additional informed participants (if any) that an attacker would need to add to his team. As with the process for determining attack difficulty, the Brennan Center interviewed numerous election officials to see whether they agreed with the steps and values assigned. When necessary, the values and steps for defeating the countermeasures were altered to reflect the input of election officials.

COUNTERMEASURES EXAMINED

BASIC SET OF COUNTERMEASURES

The first set of countermeasures we looked at is the “Basic Set” of countermeasures. This Basic Set was derived from security survey responses³⁶ we received

from county election officials around the country, as well as additional interviews with more than a dozen current and former election officials. Within the Basic Set of countermeasures are the following procedures:

Inspection

The jurisdiction is not knowingly using any uncertified software that is subject to inspection by the Independent Testing Authority (often referred to as the “ITA”).³⁷

Physical Security for Machines

- Ballot boxes (to the extent they exist) are examined (to ensure they are empty) and locked by poll workers immediately before the polls are opened.
- Before and after being brought to the polls for Election Day, voting systems for each county are locked in a single room, in a county warehouse.
- The warehouse has perimeter alarms, secure locks, video surveillance and regular visits by security guards.
- Access to the warehouse is controlled by sign-in, possibly with card keys or similar automatic logging of entry and exit for regular staff.
- Some form of “tamper evident” seals are placed on machines before and after each election.
- The machines are transported to polling locations five to fifteen days before Election Day.

Chain of Custody/Physical Security of Election Day Records

- At close of the polls, vote tallies for each machine are totaled and compared with number of persons that have signed the poll books.
- A copy of totals for each machine is posted at each polling place on Election Night and taken home by poll workers to check against what is posted publicly at election headquarters, on the web, in the papers, or elsewhere.³⁸
- All audit information (*i.e.*, Event Logs, VVPT records, paper ballots, machine printouts of totals) that is not electronically transmitted as part of the unofficial upload to the central election office, is delivered in official, sealed and hand-delivered information packets or boxes. All seals are numbered and tamper-evident.
- Transportation of information packets is completed by two election officials representing opposing parties who have been instructed to remain in joint custody of the information packets or boxes from the moment it leaves the precinct to the moment it arrives at the county election center.

- Each polling place sends its information packets or boxes to the county election center separately, rather than having one truck or person pick up this data from multiple polling locations.
- Once the sealed information packets or boxes have reached the county election center, they are logged. Numbers on the seals are checked to ensure that they have not been replaced. Any broken or replaced seals are logged. Intact seals are left intact.
- After the packets and/or boxes have been logged, they are provided with physical security precautions at least as great as those listed for voting machines, above. Specifically, for Pennasota, we have assumed the room in which the packets are stored have perimeter alarms, secure locks, video surveillance and regular visits by security guards and county police officers; and access to the room is controlled by sign-in, possibly with card keys or similar automatic logging of entry and exit for regular staff.

Testing³⁹

- An Independent Testing Authority has certified the model of voting machine used in the polling place.
- Acceptance Testing⁴⁰ is performed on machines at time, or soon after they are received by County.
- Pre-election Logic and Accuracy⁴¹ testing is performed by the relevant election official.
- Prior to opening the polls, every voting machine and vote tabulation system is checked to see that it is still configured for the correct election, including the correct precinct, ballot style, and other applicable details.

REGIMEN FOR AUTOMATIC ROUTINE AUDIT PLUS BASIC SET OF COUNTERMEASURES.

The second set of countermeasures is the Regimen for an Automatic Routine Audit Plus Basic Set of Countermeasures.

Some form of routine auditing of voter-verified paper records occurs in 12 states, to test the accuracy of electronic voting machines. They generally require between 1 and 10% of all precinct voting machines to be audited after each election. ⁴²

Jurisdictions can implement this set of countermeasures only if their voting systems produce some sort of voter-verified paper record of each vote. This could be in the form of a paper ballot, in the case of PCOS, or a voter-verified paper trail (“VVPT”), in the case of DREs.

We have assumed that jurisdictions take the following steps when conducting an Automatic Routine Audit (when referring to this set of assumptions “Regimen for an Automatic Routine Audit”):

The Audit

- Leaders of the major parties in each county are responsible for selecting a sufficient number of audit-team members to be used in that county.⁴³
- Using a highly transparent random selection mechanism (*see* point ii, below), the voter-verified paper records for between a small percentage of all voting machines in the State are selected for auditing.
- Using a transparent random selection method, auditors are assigned to the selected machines (two or three people, with representatives of each major political party, would comprise each audit team).
- The selection of voting machines, and the assignment of auditors to machines, occurs immediately before the audits take place. The audits take place as soon after polls close as possible – for example, at 9 a.m. the morning after polls close.
- Using a transparent random selection method, county police officers, security personnel and the video monitor assigned to guard the voter-verified records are chosen from a large pool of on-duty officers and employees on election night.
- The auditors are provided the machine tallies and are able to see that the county tally reflects the sums of the machine tallies before the start of the inspection of the paper.
- The audit would include a tally of spoiled ballots (in the case of VVPT, the number of cancellations recorded), overvotes, and undervotes.

Transparent Random Selection Process

In this report, we have assumed that random auditing procedures are in place for both the Regimen for an Automatic Routine Audit and Regimen for Parallel Testing. We have further assumed procedures to prevent a single, corrupt person from being able to fix the results. This implies a kind of transparent and public random procedure.

For the Regimen for an Automatic Routine Audit there are at least two places where transparent, random selection processes are important: in the selection of precincts to audit, and in the assignment of auditors to the precincts they will be auditing.

Good election security can employ Transparent Random Selection in other places with good effect:

- the selection of parallel testers from a pool of qualified individuals.
- the assignment of police and other security professionals from on-duty lists, to monitor key materials, for example, the VVPT records between the time that they arrive at election central and the time of the completion of the ARA.

If a selection process for auditing is to be trustworthy and trusted, ideally:

- The whole process will be publicly observable or videotaped;⁴⁴
- The random selection will be publicly verifiable, *i.e.*, anyone observing will be able to verify that the sample was chosen randomly (or at least that the number selected is not under the control of any small number of people); and
- The process will be simple and practical within the context of current election practice so as to avoid imposing unnecessary burdens on election officials.

There are a number of ways that election officials can ensure some kind of transparent randomness. One way would be to use a state lottery machine to select precincts or polling places for auditing. We have included two potential examples of transparent random selection processes in Appendix F. These apply to the Regimen for Parallel Testing as well.

REGIMEN FOR PARALLEL TESTING PLUS BASIC SET OF COUNTERMEASURES

The final set of countermeasures we have examined is “Parallel Testing” plus the Basic Set of countermeasures. Parallel Testing, also known as election-day testing, involves selecting voting machines at random and testing them as realistically as possible during the period that votes are being cast.

Parallel Testing

In developing our set of assumptions for Parallel Testing, we relied heavily upon interviews with Jocelyn Whitney, Project Manager for Parallel Testing in the State of California, and conclusions drawn from this Report.⁴⁵ In our analysis, we assume that the following procedures would be included in the Parallel Testing regimen (when referring to this regimen “Regimen for Parallel Testing”) that we evaluate:

- At least two of each DRE model (meaning both vendor and model) would be selected for Parallel Testing;
- At least two DREs from each of the three largest counties would be parallel tested;
- Counties to be parallel tested would be chosen by the Secretary of State in a transparent and random manner.
- Counties would be notified as late as possible that machines from one of their precincts would be selected for Parallel Testing;⁴⁶
- Precincts would be selected through a transparent random mechanism;
- A video camera would record testing;
- For each test, there would be one tester and one observer;

- Parallel Testing would occur at the polling place;
- The script for Parallel Testing would be generated in a way that mimics voter behavior and voting patterns for the polling place;
- At the end of the Parallel Testing, the tester and observer would reconcile vote totals in the script with vote totals reported on the machine.

Transparent Random Selection Process

We further assume that the same type of transparent random selection process that would be used for the Regimen for Automatic Routine Audit would also be employed for the Regimen for Parallel Testing to determine which machines would be subjected to testing on Election Day.

APPENDIX C

ALTERNATIVE SECURITY METRICS CONSIDERED

Dollars Spent

The decision to use the number of informed participants as the metric for attack level difficulty came after considering several other potential metrics. One of the first metrics we considered was the dollar cost of attacks. This metric makes sense when looking at attacks that seek financial gain – for instance, misappropriating corporate funds. It is not rational to spend \$100,000 on the misappropriation of corporate funds if the total value of those funds is \$90,000. Ultimately, we rejected this metric as the basis for our analysis because the dollar cost of the attacks we considered were dwarfed by both (1) current federal and state budgets, and (2) the amounts currently spent legally in state and federal political campaigns.

Time of Attack

The relative security of safes and other safety measures are often rated in terms of “time to defeat.” This was rejected as metric of difficulty because it did not seem relevant to voting systems. Attackers breaking into a house are concerned with the amount of time it might take to complete their robbery because the homeowners or police might show up. With regard to election fraud, many attackers may be willing to start months or years before an election if they believe they can control the outcome. As discussed *supra* at pp. 35–48, attackers may be confident that they can circumvent the independent testing authorities and other measures meant to identify attacks, so that the amount of time an attack takes becomes less relevant.

Appendix 4
Voting Fraud-Voter Intimidation Working Group

The Honorable Todd Rokita

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

Kathy Rogers

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

J.R. Perez

Guadalupe County Elections Administrator, Texas

Barbara Arnwine

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

Robert Bauer

Chair of the Political Law Practice at the law firm of Perkins Coie, District of Columbia

National Counsel for Voter Protection, Democratic National Committee

Benjamin L. Ginsberg

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

Mark (Thor) Hearne II

Partner-Member, Lathrop & Gage, St Louis, Missouri

National Counsel to the American Center for Voting Rights

Barry Weinberg

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

EAC Invited Technical Advisor:

Craig Donsanto

Director, Election Crimes Branch, U.S. Department of Justice

ⁱ Department of Justice's Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R

ⁱⁱ The MyVote1 Project Final Report, Fels Institute of Government, University of Pennsylvania, November 1, 2005, Pg. 12

ⁱⁱⁱ Department of Justice's Activities to Address Past Election-Related Voting Irregularities, General Accounting Office, October 14, 2004, GAO-04-1041R, p. 4. This same report criticizes some of the procedures the Section used for these systems and urged the Department to improve upon them in time for the 2004 presidential election. No follow-up report has been done since that time to the best of our knowledge.


^{iv} "Department Of Justice To Hold Ballot Access and Voting Integrity Symposium," U.S. Department of Justice press release, August 2, 2005

^v Craig C. Donsanto, Prosecution of Electoral Fraud Under United States Federal Law," IFES Political Finance White Paper Series, 2006, p. 29

^{vi} Ana Henderson and Christopher Edley, Jr., Voting Rights Act Reauthorization: Research-Based Recommendations to Improve Voting Access, Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity, University of California at Berkeley, School of Law, 2006, p. 29

DRAFT

Jeannie Layson /EAC/GOV
11/15/2006 01:22 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Re: Draft fraud and intimidation report 

Here's my suggestions...



Voter Fraud & Intimidation j edits.doc
Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

EAC REPORT ON VOTER FRAUD AND VOTER INTIMIDATION STUDY**INTRODUCTION**

Voter fraud and intimidation is a phrase familiar to many voting-aged Americans. However, it means different things to different people. Voter fraud and intimidation is a phrase used to refer to crimes, civil rights violations, and, at times, even the correct application of state or federal laws to the voting process. Past study of this topic has been as varied as its perceived meaning. In an effort to help understand the realities of voter fraud and voter intimidation in our elections, the U.S. Election Assistance Commission (EAC) has begun this, phase one, of a comprehensive study on election crimes. In this phase of its examination, EAC has developed a definition of election crimes and adopted some research methodology on how to assess the true-existence and enforcement of election crimes in this country.

PURPOSE AND METHODOLOGY OF THE EAC STUDY

Section 241 of the Help America Vote Act of 2002 (HAVA) calls on the U.S. Election Assistance Commission (EAC) to research and study various issues related to the administration of elections. During Fiscal Year 2006, EAC began projects to research several of the listed topics. These topics for research were chosen in consultation with the EAC Standards Board and Board of Advisors. Voter fraud and voter intimidation was a topic that the EAC as well as its advisory boards felt were important to study to help improve the administration of elections for federal office.

EAC began this study with the intention of identifying a common understanding of voter fraud and intimidation and devising a plan for a comprehensive study of these issues. This study was not intended to be a comprehensive review of existing voter fraud and voter intimidation actions, laws, or prosecutions. ~~That~~ To conduct that type of extensive research, a is well beyond the basic understanding that had to be ~~first~~ first be established regarding what is commonly referred to as voter fraud and voter intimidation. Once that understanding was reached, a definition had to be crafted to refine and in some cases limit the scope of what reasonably can be researched and studied as evidence of voter fraud and voter intimidation. That definition will serve as the basis for recommending a plan for a comprehensive study of the area.

To accomplish these tasks, EAC employed two consultants, ~~who worked with who along with EAC staff and interns~~ to conducted the research that forms the basis of this report. Consultants were chosen based upon their experience with the topic. ~~In addition, consultants were and to chosen to assure a bipartisan representation in this study.~~ The consultants and EAC staff were charged (1) to research the current state of information on the topics of voter fraud and voter intimidation; (2) to develop a uniform definition of voter fraud and voter intimidation; and (3) to propose recommended strategies for researching this subject.

EAC consultants reviewed existing studies, articles, reports and case law on voter fraud and intimidation. ~~In addition, EAC consultants and~~ conducted interviews with selected experts in the field. ~~Last, EAC consultants and staff then presented their study-initial findings~~ to a working group that provided feed-back. The working group participants were:

The Honorable Todd Rokita
Indiana Secretary of State
Member, EAC Standards Board and the
Executive Board of the Standards Board

Kathy Rogers
Georgia Director of Elections, Office of
the Secretary of State
Member, EAC Standards Board

J.R. Perez
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Administrator, Texas

Barbara Arnwine
Executive Director, Lawyers Committee
for Civil Rights under Law
Leader of Election Protection Coalition

Benjamin L. Ginsberg
Partner, Patton Boggs LLP
Counsel to national Republican
campaign committees and Republican
candidates

Robert Bauer
Chair of the Political Law Practice at the
law firm of Perkins Coie, District of
Columbia
National Counsel for Voter Protection,
Democratic National Committee

Mark (Thor) Hearne II
Partner-Member, Lathrop & Gage, St
Louis, Missouri
National Counsel to the American
Center for Voting Rights

Barry Weinberg
Former Deputy Chief and Acting Chief,
Voting Section, Civil Rights Division,
U.S. Department of Justice

Technical Advisor:

Craig Donsanto
Director, Election Crimes Branch, U.S.
Department of Justice

Throughout the process, EAC staff assisted the consultants by providing statutes and cases on this subject as well as supervision on the direction, scope and product of this research.

The consultants drafted a report for EAC that included their summaries of existing laws, cases, studies and reports on voter fraud and intimidation as well as summaries of the interviews that they conducted. The draft report also provided a definition of voter fraud and intimidation and made certain recommendations developed by the consultants or by the working group on how to pursue further study of this subject. This document was vetted and edited by EAC staff to produce this final report.

EXISTING INFORMATION ABOUT FRAUD AND INTIMIDATION

To begin our study of voter fraud and voter intimidation, EAC consultants reviewed the current body of information on voter fraud and intimidation. ~~What the world knows~~ The

information available about these issues comes largely from a very limited body of reports, articles, and books. There are volumes of case law and statutes in the various states that also impact our understanding of what actions or inactions are legally considered fraud or intimidation. Last, there is anecdotal information available through media reports and interviews with persons who have administered elections, prosecuted fraud, and studied these problems. All of these resources were used by EAC consultants to provide an introductory look at the available knowledge of voter fraud and voter intimidation.

Reports and Studies of Voter Fraud and Intimidation

Over the years, there have been a number of studies conducted about the concepts of voter fraud and voter intimidation. EAC reviewed many of these studies and reports to develop a base-line understanding of the information that is currently available about voter fraud and voter intimidation. EAC consultants reviewed the following articles, reports and books, summaries of which are available in Appendix “___”:

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Articles and Reports

- People for the American Way and the NAACP, “The Long Shadow of Jim Crow,” December 6, 2004.
- Laughlin McDonald, “The New Poll Tax,” *The American Prospect* vol. 13 no. 23, December 30, 2002.
- Wisconsin Legislative Audit Bureau, “An Evaluation: Voter Registration Elections Board” Report 05-12, September, 2005.
- Milwaukee Police Department, Milwaukee County District Attorney’s Office, Federal Bureau of Investigation, United States Attorney’s Office “Preliminary Findings of Joint Task Force Investigating Possible Election Fraud,” May 10, 2005.
- National Commission on Federal Election Reform, “Building Confidence in U.S. Elections,” Center for Democracy and Election Management, American University, September 2005.
- The Brennan Center for Justice at NYU School of Law and Spencer Overton, Commissioner and Law Professor at George Washington University School of Law “Response to the Report of the 2005 Commission on Federal Election Reform,” September 19, 2005.
- Chandler Davidson, Tanya Dunlap, Gale Kenny, and Benjamin Wise, “Republican Ballot Security Programs: Vote Protection or Minority Vote Suppression – or Both?” A Report to the Center for Voting Rights & Protection, September, 2004.

- Alec Ewald, "A Crazy Quilt of Tiny Pieces: State and Local Administration of American Criminal Disenfranchisement Law," The Sentencing Project, November 2005.
- American Center for Voting Rights "Vote Fraud, Intimidation and Suppression in the 2004 Presidential Election," August 2, 2005.
- The Advancement Project, "America's Modern Poll Tax: How Structural Disenfranchisement Erodes Democracy" November 7, 2001
- The Brennan Center and Professor Michael McDonald "Analysis of the September 15, 2005 Voter Fraud Report Submitted to the New Jersey Attorney General," The Brennan Center for Justice at NYU School of Law, December 2005.
- Democratic National Committee, "Democracy at Risk: The November 2004 Election in Ohio," DNC Services Corporation, 2005
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2002."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2003."
- Public Integrity Section, Criminal Division, United States Department of Justice, "Report to Congress on the Activities and Operations of the Public Integrity Section for 2004."
- Craig Donsanto, "The Federal Crime of Election Fraud," Public Integrity Section, Department of Justice, prepared for Democracy.Ru, n.d., at http://www.democracy.ru/english/library/international/eng_1999-11.html
- People for the American Way, Election Protection 2004, Election Protection Coalition, at <http://www.electionprotection2004.org/edaynews.htm>
- Craig Donsanto, "Prosecution of Electoral Fraud under United State Federal Law," *IFES Political Finance White Paper Series*, IFES, 2006.
- General Accounting Office, "Elections: Views of Selected Local Election Officials on Managing Voter Registration and Ensuring Eligible Citizens Can Vote," Report to Congressional Requesters, September 2005.

- Lori Minnite and David Callahan, "Securing the Vote: An Analysis of Election Fraud," Demos: A Network of Ideas and Action, 2003.
- People for the American Way, NAACP, Lawyers Committee for Civil Rights, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," December 2004.

Books

- John Fund, *Stealing Elections: How Voter Fraud Threatens Our Democracy*, Encounter Books, 2004.
- Andrew Gumbel, *Steal this Vote: Dirty Elections and the Rotten History of Democracy in American*, Nation Books, 2005.
- Tracy Campbell, *Deliver the Vote: A History of Election Fraud, An American Political Tradition – 1742-2004*, Carroll & Graf Publishers, 2005.
- David E. Johnson and Jonny R. Johnson, *A Funny Thing Happened on the Way to the White House: Foolhardiness, Folly, and Fraud in the Presidential Elections, from Andrew Jackson to George W. Bush*, Taylor Trade Publishing, 2004.
- Mark Crispin Miller, *Fooled Again*, Basic Books, 2005.

During our review of these documents, we learned a great deal about the type of research that has been conducted in the past concerning voter fraud and voter intimidation. None of the studies or reports was based on a comprehensive study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voter fraud or voter intimidation. Most reports focused on a limited number of case studies or instances of alleged voter fraud or intimidation. For example, "Shattering the Myth: An Initial Snapshot of Voter Disenfranchisement in the 2004 Elections," a report produced by the People for the American Way, focused exclusively on citizen reports of fraud or intimidation to the Election Protection (is this DOJ?) program during the 2004 presidential election. Similarly, reports produced annually by the Department of Justice, Public Integrity Division, deal exclusively with crimes reported to and prosecuted by the United States Attorneys and/or the Department of Justice through the Public Integrity Section.

It is also apparent from a review of these articles and books that there is no consensus on the pervasiveness of voter fraud and voter intimidation. Some reports, such as "Building Confidence in U.S. Elections," suggest that there is little or no evidence of extensive fraud in U.S. elections or of multiple voting. This conflicts directly with other reports, such as the "Preliminary findings of Joint Task Force Investigating Possible Election Fraud," produced by the Milwaukee Police Department, Milwaukee County District

Attorney's Office, FBI and U.S. Attorney's Office. That report cited evidence of more than 100 individual instances of suspected double-voting, voting in the name of persons who likely did not vote, and/or voting using a name believed to be fake.

Voter intimidation is also a topic of some debate. ~~Generally, speaking, because there is little agreement on what constitutes actionable voter intimidation. Some studies and reports cover only intimidation that involves physical or financial threats, while others cover non-criminal intimidation, even legal practices, that they allege suppress suppression of the vote.~~

One point of agreement is that absentee voting and voter registration by third-party groups create opportunities for fraud. A number of studies cited circumstances in which voter registration drives have falsified voter registration applications or have destroyed voter registration applications of voters of a certain party. Others conclude that paying persons per voter registration application creates the opportunity and perhaps the incentive for fraud.

Interviews with Experts

In addition to reviewing prior studies and reports on voter fraud and intimidation, EAC consultants interviewed a number of persons regarding their experiences and research of voter fraud and voter intimidation. Persons interviewed included:

Wade Henderson

Executive Director,
Leadership Conference for Civil Rights

Pat Rogers

Attorney, New Mexico

Wendy Weiser

Deputy Director,
Democracy Program, The Brennan
Center

Rebecca Vigil-Giron

Secretary of State, New Mexico

William Groth

Attorney for the plaintiffs in the Indiana
voter identification litigation

Sarah Ball Johnson

Executive Director,
State Board of Elections, Kentucky

Lori Minnite

Barnard College, Columbia University

Stephen Ansolobohere

Massachusetts Institute of Technology

Neil Bradley

ACLU Voting Rights Project

Chandler Davidson

Rice University

Nina Perales

Counsel,
Mexican American Legal Defense and
Education Fund

Tracey Campbell

Author, *Deliver the Vote*

Douglas Webber

Assistant Attorney General, Indiana

Heather Dawn Thompson
Director of Government Relations,
National Congress of American Indians

Kevin Kennedy
Executive Director
State Board of Elections, Wisconsin

Jason Torchinsky
Assistant General Counsel,
American Center for Voting Rights

Evelyn Stratton
Justice
Supreme Court of Ohio

Robin DeJarnette
Executive Director,
American Center for Voting Rights

Tony Sirvello
Executive Director
International Association of Clerks,
Recorders, Election Officials and
Treasurers

Harry Van Sickle
Commissioner of Elections,
Pennsylvania

Joseph Rich
Former Director
Voting Section, Civil Rights Division
U.S. Department of Justice

Joseph Sandler
Counsel
Democratic National Committee

Craig Donsanto
Director, Public Integrity Section
U.S. Department of Justice

John Ravitz
Executive Director
New York City Board of Elections

John Tanner
Director
Voting Section, Civil Rights Division
U.S. Department of Justice

Sharon Priest
Former Secretary of State, Arkansas

These interviews in large part confirmed the conclusions that were gleaned from the articles, reports and books that were analyzed. For example, the interviewees largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote buying and voter registration fraud. They similarly pointed to voter registration drives by third-party groups as a source of fraud, particularly when the workers are paid per registration. Many asserted that impersonation of voters is probably the least frequent type of fraud, ~~citing as reasons that~~ because it was the most likely type of fraud to be discovered and due to the stiff ~~that there are stiff~~ penalties associated with this type of fraud.

Interviewees differed on what they believe constitutes actionable voter intimidation. Law enforcement and prosecutorial agencies tend to look to the criminal definitions of voter intimidation, which generally require some threat of physical or financial harm. On the other hand, voter rights advocates tended to point to activities such as challenger laws, voter identification laws, ~~the location of polling place~~ locations, and distribution of voting machines as activities that can constitute voter intimidation.

Those interviewed also expressed opinions on the enforcement of voter fraud and voter intimidation laws. States have varying authorities to enforce these laws. In some states, enforcement is left to the county or district attorney, and in others enforcement is managed by the state's attorney general. Regardless, voter fraud and voter intimidation are difficult to prove and require resources and time that many local law enforcement and prosecutorial agencies do not have. Federal law enforcement and prosecutorial agencies have more time and resources but have limited jurisdiction and. ~~They can only prosecute crimes related to elections involving federal candidates.~~ Those interviewed differed on the effectiveness of the current system of enforcement, including those ~~that~~ who allege that prosecutions are not sufficiently aggressive and those ~~that~~ who feel that the current laws are sufficient for prosecuting fraud and intimidation.

A summary of the each of the interviews conducted is attached as Appendix “___”.

Case Law and Statutes

Consultants reviewed ~~over more than~~ 40,000 cases that were identified using a series of search terms related to voter fraud and voter intimidation. The majority of these cases came from appeal courts. This is not a surprising situation, since most cases that are publicly reported come from courts of appeal. Very few cases that are decided at the district court level are reported for public review.

Very few of the identified cases were applicable to this study. Of those that were applicable, no apparent thematic pattern emerged. However, it did seem (WHY DID IT “SEEM” THIS WAY? IS THERE EVIDENCE?) that the greatest number of cases reported on fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

A listing of the cases reviewed in this study is attached as Appendix “___”.

Media Reports

EAC consultants reviewed thousands of media reports concerning a wide variety of potential voter fraud or voter intimidation, including:

- absentee ballot fraud,
- voter registration fraud,
- voter intimidation and suppression,
- deceased voters,
- multiple voting,
- felons voting,
- non-citizens voting,
- vote buying,
- deceptive practices, and

- fraud by election officials.

While these reports showed that there were a large number of allegations of voter fraud and voter intimidation, they provided much less information as to whether the allegations were ever formalized as complaints to law enforcement, whether charges were filed, whether prosecutions ensued, and whether any convictions were made. The media reports were enlightening as to the pervasiveness of complaints of fraud and intimidation throughout the country, the correlation between fraud allegations and the perception that the state was a “battleground” or “swing” state, and the fact that there were reports of almost all types of voter fraud and voter intimidation. However, these reports do not provide much data for analysis as to the number of complaints, charge and prosecutions of voter fraud and intimidation throughout the country.

DEFINITION OF ELECTION CRIMES

From our study of available information on voter fraud and voter intimidation, we have learned that these terms mean many things to many different people. These terms are used casually to refer to anything from vote buying to refusing to register a voter to falsifying voter registration applications. Upon further inspection, however, it is apparent that there is no common understanding or agreement of what is and what is not constitutes “voter fraud” and “voter intimidation.” Some think of voter fraud and voter intimidation only as criminal acts, while others include actions that may constitute civil wrongs, civil rights violations, and even legal and appropriate activities. In order to arrive at a common definition and list of activities that can be studied, EAC assessed the appropriateness of the terminology that is currently in use and applied certain factors to limit the scope and reach of what can and will be studied by EAC in the future.

New Terminology

The phrase “voter fraud” is really a misnomer for a concept that is much broader. “Fraud” is a concept that connotes an intentional act of deception, which may constitute either a criminal act or civil tort depending upon the willfulness of the act.

Fraud, n. 1. A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. • Fraud is usu. a tort, but in some cases (esp. when the conduct is willful) it may be a crime.

Black’s Law Dictionary, Eighth Edition, p. 685.

A “voter” is a person who is eligible to and engages in the act of voting. Black’s Law Dictionary, Eighth Edition, p. 1608. Using these terms to form a definition of “voter fraud,” it means fraudulent or deceptive acts committed by the voter or in which the voter is the victim. Thus, a voter who intentionally provides false information on a voter registration application or intentionally impersonates another registered voter and attempts to vote for that person would be committing “voter fraud.” Similarly, a person

who knowingly provides false information to a voter about the location of the voter's polling place commits fraud on the voter.

The phrase "voter fraud" does not capture a myriad of other criminal acts that are related to elections which are not perpetrated by the voter and/or do not involve an act of deception. For example, "voter fraud" does not capture actions or willful inaction by candidates and election workers. When an election official willfully and knowingly refuses to register to vote a ~~non~~ otherwise-legally eligible person it is a crime. This is a crime that involves neither the voter nor an act of deception.

To further complicate matters, the phrases "voter fraud" and "voter intimidation" are used to refer to actions or inactions that are criminal as well as those that are potentially civil wrongs and even those that are legal. Obviously, criminal acts and civil wrongs are pursued in a very different manner. Criminal acts are prosecuted by the local, state or federal government. Generally, civil wrongs are prosecuted by the individual who believes that they were harmed. In some cases, when civil rights are involved, the civil division of the Department of Justice may become involved.

The goal of this study was to develop a common definition of what is generically referred to as "voter fraud" and "voter intimidation" that would serve as the basis of a future, comprehensive study of the existence of these problems. In order to meet that goal, we recognize that the current terminology does not accurately represent the spectrum of activities that we desire to study. Furthermore, we recognize that the resources, both financial and human capital, needed to study allegations and prosecutions of criminal acts, suits involving civil torts, and allegations of potential voter suppression through the use of legal election processes are well beyond the resources available to EAC. As such, EAC has defined "election crimes," a phrase that captures all crimes related to the voter registration and voting processes.

What is an Election Crime for Purposes of this Study

Election crimes are intentional acts or willful failures to act, prohibited by state or federal law, that are designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results. Election crimes generally fall into one of four categories: acts of deception, acts of coercion, acts of damage or destruction, and failures or refusals to act.

Generally speaking, election crimes can be committed by voters, candidates, election officials, or any other members of the public ~~that~~ who desire to criminally impact the result of an election. However, crimes that are based upon ~~knowing~~ intentional or willful failure to act assume that a duty to act exists. Election officials have affirmative duties to act with regard to elections. By and large, other groups and individuals do not have such duties.

The victim of an election crime can be a voter, a group of voters, an election official, a candidate, or the public, in general. Election crimes can occur during any stage of the election process, including but not limited to qualification of candidates; voter registration; campaigning; voting system preparation and programming; voting either early, absentee, or election day; vote tabulation; recounts; and recalls.

The following are examples of activities that may constitute election crimes. This list is not intended to be exhaustive, but is representative of what states and the federal government consider criminal activity related to elections.

Acts of Deception

- o Knowingly causing to be mailed or distributed, or knowingly mailing or distributing, literature that includes false information about the voter's precinct or polling place, ~~regarding the date and time of the election or regarding a candidate;~~
- o Possessing an official ballot outside the voting location, unless the person is an election official or other person authorized by law or local ordinance ~~to possess a ballot outside of the polling location;~~
- o Making, or knowingly possessing, a counterfeit of an official election ballot;
- o Signing a name other than his/her own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office;
- o Knowingly signing more than once for the proposition, question, or candidate at one election;
- o Signing a petition proposing an initiative or referendum when the signer is not a qualified voter.
- o Voting or attempting to vote in the name of another person;
- o Voting or attempting to vote more than once ~~at during~~ the same election;
- o Intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by a statute regarding their voting status, including when registering to vote, requesting an absentee ballot or presenting to vote in person;
- o Registering to vote without being entitled to register;
- o Knowingly making a material false statement on an application for voter registration or re-registration; and
- o Voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote.

Acts of Coercion

- o Using, threatening to use, or causing to be used force, coercion, violence, restraint, or inflicting, threatening to inflict, or causing to be inflicted damage harm, or loss, upon or against another person to induce or compel that person to vote or refrain from voting or to register or refrain from registering to vote;
- o Knowingly paying, offering to pay, or causing to be paid money or other thing of valuable thing-e to a person to vote or refrain from voting for a candidate or for or against an election proposition or question;

- Knowingly soliciting or encouraging a person who is not qualified to vote in an election;
- Knowingly challenging a person's right to vote without probable cause or on fraudulent grounds, or engaging in mass, indiscriminate, and groundless challenging of voters solely for the purpose of preventing voter from voting or delay the process of voting;
- As an employer, attempting by coercion, intimidation, threats to discharge or to lessen the remuneration of an employee, to influence his/her vote in any election, or who requires or demands an examination or inspection by himself/herself or another of an employee's ballot;
- Soliciting, accepting, or agreeing to accept money or other valuable thing in exchange for signing or refraining from signing a petition proposing an initiative;
- Inducing or attempting to induce an election official to fail in the official's duty by force, threat, intimidation, or offers of reward;
- Directly or through any other person advancing, paying, soliciting, or receiving or causing to be advanced, paid, solicited, or received, any money or other valuable consideration to or for the use of any person in order to induce a person not to become or to withdraw as a candidate for public office; and
- Soliciting, accepting, or agreeing to accept money or other thing of valuable thing e in exchange for registering to vote.

Acts of Damage or Destruction

- Removing or destroying any of the supplies or other conveniences placed in the voting booths or compartments ~~for the purpose of enabling the voter to vote his or her ballot;~~
- Removing, tearing down, or defacing election materials, instructions or ballots;
- Fraudulently altering or changing the vote of any elector, by which such elector is prevented from voting as ~~he~~ the person intended;
- Knowingly removing, altering, defacing or covering any political sign of any candidate for public office for a prescribed period prior to and following the election;
- Intentionally changing, attempting to change, or causing to be changed an official election document including ballots, tallies, and returns; and
- Intentionally delaying, attempting to delay, or causing to be delayed the sending of certificate, register, ballots, or other materials whether original or duplicate, required to be sent by jurisdictional law.

Failure or Refusal to Act

- Intentionally failing to perform an election duty, or knowingly committing an unauthorized act with the intent to effect the election;
- Knowingly permitting, making, or attempting to make a false count of election returns;
- Intentionally concealing, withholding, or destroying election returns or attempts to do so;

- o Marking a ballot by folding or physically altering the ballot so as to recognize the ballot at a later time;
- o Attempting to learn or actually and unlawfully learning how a voter marked a ballot;
- o Distributing or attempting to distribute election material knowing it to be fraudulent;
- o Knowingly refusing to register a person who is entitled to register under the rules of that jurisdiction; and
- o Knowingly removing the eligibility status of a voter who is eligible to vote; and
- o Knowingly refusing to allow an eligible voter to cast his/her ballot.

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What is not an Election Crime for Purposes of this Study

There are some actions or inactions that may constitute crimes or civil wrongs that we do not include in our definition of “election crimes.” All crimes or civil violations related to campaign finance reporting either at the state or federal level are not “election crimes” for purposes of this study and any future study conducted by EAC. Similarly, criminal acts that are unrelated to elections, voting, or voter registration are not “election crimes,” even when those offenses occur in a polling place, voter registration office, or a candidate’s office or appearance. For example, an assault or battery that results from a fight in a polling place or at a candidate’s office is not an election crime. Similarly, violations of ethical provisions such as the Hatch Act are not “election crimes.” Last, and actions that do not rise to the level of criminal activity, that such as is a misdemeanor, relative felony or felony, are not “election crimes.”

RECOMMENDATIONS ON HOW TO STUDY ELECTION CRIMES

As a part of its study, EAC sought recommendations on ways that EAC can study research the existence of election crimes. EAC consultants, the working groups and some of the persons interviewed developed recommendations. In addition, the working group and some of the persons interviewed as a part of this study provided the following recommendations.

Recommendation 1: Conduct More Interviews

Future activity in this area should include conducting additional interviews. In particular, more election officials from all levels of government, parts of the country, and political parties should be interviewed. It would also be especially beneficial to talk to people in law enforcement officials, specifically federal District Election Officers (“DEOs”) and local district attorneys, as well as civil and criminal defense attorneys.

Recommendation 2: Follow Up on Media Research

The media search conducted for this phase of the research was based on a list of search terms agreed upon by EAC consultants. Thousands of articles were reviewed and hundreds analyzed. Many of the articles contained allegations of fraud or intimidation.

Similarly, many of the articles contained information about investigations into such activities or even charges brought. (THIS SENTENCE CONTRADICTS WHAT WAS SAID EARLIER ABOUT THE LACK OF MEDIA ARTICLES ON FOLLOW UP.)

Additional media research should be conducted to determine what, if any, resolutions or further activity there was in each case.

Recommendation 3: Follow Up on Allegations Found in Literature Review

Many of the allegations made in the reports and books that were analyzed and summarized by EAC consultants were not substantiated and were certainly limited by the date of publication of those pieces. Despite this, such reports and books are frequently cited by various interested parties as evidence of fraud or intimidation. Further research should include follow up on the allegations discovered in the literature review.

Recommendation 4: Review Complaints Filed With “MyVote1” Voter Hotline

During the 2004 election and the statewide elections of 2005, the University of Pennsylvania led a consortium of groups and researchers in conducting the MyVote1 Project. This project involved using a 1-800 toll-free voter hotline where that voters could call for poll locations, be transferred to a local hotline, or leave a recorded message with a complaint. In 2004, this resulted in over more than 200,000 calls received and over more than 56,000 recorded complaints.

Further research should be conducted using the MyVote1 data with the cooperation of the project leaders. While perhaps not a fully scientific survey given the self-selection of the callers, the information regarding 200,000 56,000 complaints may provide a good deal of insight into the problems voters may have experienced, especially those in the nature of issues regarding intimidation or suppression.

Recommendation 5: Further Review of Complaints Filed With U.S. Department of Justice

~~Although a~~ According to a recent GAO report, the Voting Section of the Civil Rights Division of the Department of Justice has a variety in ways it tracks complaints of voter intimidation. Attempts should be made to obtain relevant data, including the telephone logs of complaints and information from the Interactive Case Management (ICM) system. Further research should also include a review and analysis of the DOJ/OPM observer and “monitor field reports” (NOT SURE WHAT THIS MEANS) from Election Day.

Recommendation 6: Review Reports Filed By District Election Officers

Further research should include a review of the reports that must be filed by every District Election Officer to the Public Integrity Section of the Criminal Division of the Department of Justice. The DEOs play a central role in receiving reports of voter fraud and investigating and pursuing them. Their reports back to the Department would likely

provide tremendous insight into what actually transpired during the last several elections. Where necessary, information could be redacted or made confidential.

Recommendation 7: Attend Ballot Access and Voting Integrity Symposium

Further activity in this area should include attending the next Ballot Access and Voting Integrity Symposium. At this conference, prosecutors serving as District Election Officers in the 94 U.S. Attorneys' Offices obtain annual training on fighting election fraud and voting rights abuses. These conferences are sponsored by the Voting Section of the Civil Rights Division and the Public Integrity Section of the Criminal Division, and feature presentations by Civil Rights officials and senior prosecutors from the Public Integrity Section and the U.S. Attorneys' Offices. By attending the symposium researchers could learn more about the following: how District Election Officers are trained; how information about previous election and voting issues is presented; and how the Voting Rights Act, the criminal laws governing election fraud and intimidation, the National Voter Registration Act, and the Help America Vote Act are described and explained to participants.

Recommendation 8: Conduct Statistical Research

EAC should measure voter fraud and intimidation using interviews, focus groups, and a survey and statistical analysis of the results of these efforts. The sample should be based on the following factors:

- Ten locations that are geographically and demographically diverse where there have historically been many reports of fraud and/or intimidation;
- Ten locations (geographically and demographically diverse) that have not had many reports of fraud and/or intimidation;

EAC should also conduct a survey of elections officials, district attorneys, and district election officers. (WHAT WOULD WE SURVEY THEM ABOUT?) The survey sample should be large in order to be able to get the necessary subsets, and it. The sample must include a random set of counties where there have and have not been a large number of allegations.

Recommendation 9: Explore Improvements to Federal Law

Future researchers should review federal law to explore ways to make it easier to impose either civil or criminal penalties for acts of intimidation that do not necessarily involve racial animus and/or a physical or economic threat.

Recommendation 10: Use Observers to Collect Data on Election Day

Use observers to collect data regarding fraud and intimidation at the polls in on Election Day. There may be some limitations to the ability to conduct this type of research, including difficulty gaining access to polling places for the purposes of observation.

Recommendation 11: Study Absentee Ballot Fraud

Because absentee ballot fraud constitutes a large portion of election crimes, a stand-alone study of absentee ballot fraud should be conducted. Researchers should look at actual cases to see how absentee ballot fraud schemes are conducted in an effort to provide recommendations on more effective measures for preventing them fraud when absentee ballots are used.

Recommendation 12: Use Risk Analysis Methodology to Study Fraud

Conduct an analysis of what types of fraud people are most likely to commit. Researchers ~~can~~ will use that risk analysis to rank the types of fraud based on the “ease of commission” (WHAT DOES THIS MEAN?) and the impact of the fraud.

Recommendation 13: Conduct Research Using Database Comparisons

Researchers should compare information on databases to determine whether the voter rolls contain deceased persons and felons. In addition, the voter rolls can then be compared with the list of persons who voted to determine whether a vote was recorded by someone who is deceased voters or if felons actually voted.

Recommendation 14: Conduct a Study of Deceptive Practices

The working group discussed the increasing use of deceptive practices, such as flyers and phone calls with false and/or intimidating information, to suppress voter participation. A number of groups, such as the Department of Justice, the EAC, and organizations such as the Lawyers Committee for Civil Rights, keep phone logs regarding complaints of such practices. These logs should be reviewed and analyzed to see how and where such practices are being conducted and what can be done about them.

Recommendation 15: Study Use of HAVA Administrative Complaint Procedure as Vehicle for Measuring Fraud and Intimidation

EAC should study the extent to which states are ~~actually~~ utilizing the administrative complaint procedure mandated by HAVA. In addition, the EAC should study whether data collected through the administrative complaint procedure can be used as another source of information for measuring fraud and intimidation.

Recommendation 16: Examine the Use of Special Election Courts

Given that many state and local judges are elected, it may be worth exploring whether special election courts should be established to handle fraud and intimidation complaints before, during, and after Election Day. Pennsylvania employs such a system and could investigate how well that system is working.

Accepted Recommendations

There has never been a comprehensive study that gathered data regarding all claims, charges, and prosecutions of voting crimes. EAC feels that a comprehensive study is the most important research that it can offer the election community and the public. As such, EAC has adopted all or a part of six of the 16 recommendations made by EAC consultants and the working group.

While several of the other recommendations could be used to obtain more anecdotal information regarding election crimes, EAC believes that what is needed is a comprehensive survey and study of the information available from investigatory agencies, prosecutorial bodies and courts on the number and types of complaints, charges and prosecutions of election crimes. Additional media reviews, additional interviews and the use of observers to collect information from voters on Election Day will only serve to continue the use of anecdotal data to report on election crimes. Hard data on complaints, charges and prosecutions exists and we should gather and use that data, rather than rely on the perceptions of the media or the members of the public as to what might be fraud or intimidation.

Some of the recommendations are beyond the scope of the current study. While election courts may be a reasonable conclusion to reach after we determine ~~what the~~ volume and type of election crimes are being reported, charged or prosecuted, it is premature to embark on an analysis of that solution without more information. Last, some of the recommendations do not support a comprehensive study of election crimes. While a risk analysis might be appropriate in a smaller scale study, EAC desires to conduct a broader survey to avoid the existing problem of anecdotal and limited scope of information.

In order to further its goal of developing a comprehensive data set regarding election crimes, EAC intends to engage in the following research activities in studying the existence and enforcement of election crimes:

Survey Chief Election Officers Regarding Administrative Complaints

Likely sources of complaints concerning voting crimes are the administrative complaint processes that states were required to establish as a part of complying with HAVA. Those complaint procedures were required to be in place prior to a state receiving any funds under HAVA. Citizens are permitted to file complaints under those procedures with the state's chief election official, and those complaints must be resolved within 60 days. The procedures also allow for alternative dispute resolution of claims.

In order to determine how many of these complaints allege the commission of election crimes, EAC will survey the states' chief election officers regarding complaints that have been filed, investigated, and resolved since January 1, 2004. EAC will use the definition of election crimes provided above in this report in its survey so that data regarding a uniform set of offenses ~~can~~ will be collected.

Survey State Election Crime Investigation Units Regarding Complaints Filed and Referred

Several chief state election officials have developed investigation units focused on receiving, investigating, and referring complaints of election crimes. These units were established to bolster the abilities of state and local law enforcement to investigate allegations of election crimes. California, New York and Florida are just three examples of states that have these types of units.

EAC will use a survey instrument to gather information on the numbers and types of complaints that have been received by, investigated, and ultimately referred to local or state law enforcement by election crime investigation units since January 1, 2004. This These data will help us understand the pervasiveness of perceived fraud, as well as the number of claims that state election officials felt were meritorious of being referred to local and state law enforcement or prosecutorial agencies for further action.

Survey Law Enforcement and Prosecutorial Agencies Regarding Complaints and Charge of Voting Crimes

While voters, candidates and citizens may call national hotlines or the news media to report allegations of election crimes, it is those complaints that are made to law enforcement that can be investigated and ultimately prosecuted. Thus, it is critical to the study of election crimes to obtain statistics regarding the number and types of complaints that are made to law enforcement, how many of those complaints result in the perpetrator being charged or indicted, and how many of those charges or indictments result in pleas or convictions.

Thus, EAC will survey law enforcement and prosecutorial agencies at the local, state and federal level to determine the number and types of complaints, charges or indictments, and pleas or convictions of election crimes since January 1, 2004. In addition, EAC will seek to obtain an understanding of why some complaints are not charged or indicted and why some charges or indictments are not prosecuted.


Analyze Survey Data in Light of State Laws and Procedures

Once a reliable data set concerning the existence and enforcement of election crimes is assembled, a real analysis of the effectiveness of fraud prevention measures can be conducted. For example, data can be analyzed to determine if criminal activities related to elections are isolated to certain areas or regions of the country. Data collected from the election official surveys can be compared to the data regarding complaints, charges and prosecutions gathered from the respective law enforcement and prosecutorial agencies in each jurisdiction. The effect and/or effectiveness of provisions such as voter identification laws and challenger provisions can be assessed based on hard data from areas where these laws exist. Last, analyses such as the effectiveness of enforcement can be conducted in light of the resources available to the effort.

CONCLUSION

Election crimes are nothing new to our election process. The pervasiveness of these crimes and the fervor with which they have been enforced has created a great deal of debate among academics, election officials, ~~and political pundits~~ and voters. Past studies of these issues have been limited in scope and some have been riddled with bias. These are issues that deserve comprehensive and nonpartisan review. EAC, through its clearinghouse role, will collect and analyze data on election crimes throughout the country. These data not only will tell us what types of election crimes are committed and where fraud exists, but also inform us of what factors impact the existence, prevention, and prosecution of election crimes.

Jeannie Layson /EAC/GOV
10/19/2006 02:45 PM

To Margaret Sims/EAC/GOV@EAC
cc bwhitener@eac.gov, ggilmour@eac.gov,
jthompson@eac.gov, twilkey@eac.gov
bcc
Subject Re: Media inquiry RE: fraud research 

I think that distinction comes a little too late, as the commissioners have been referring to any future report as one that would be produced by EAC. Hence, the effort to explain the difference b/w data provided/produced by consultants.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Margaret Sims /EAC/GOV

To Jeannie Layson/EAC/GOV@EAC
cc bwhitener@eac.gov, ggilmour@eac.gov, jthompson@eac.gov, twilkey@eac.gov
10/19/2006 01:55 PM
Subject Re: Media inquiry RE: fraud research Link

I don't know that we can say that EAC will produce a report on the subject in the near future. We will have the consultants' report to EAC, which I don't believe constitutes an EAC report/statement. The consultants' report never was intended to be the definitive study of voting fraud/voter intimidation that the news media and others seem to be seeking. One of the primary goals of the report was to provide recommendations for future EAC action/direction of study. In order to do this, the consultants did some preliminary research to get an idea of what problems were occurring. I don't know how soon EAC will decide which recommendations, if any, to pursue. --- Peggy

Jeannie Layson /EAC/GOV

To twilkey@eac.gov, jthompson@eac.gov, psims@eac.gov, ggilmour@eac.gov
cc bwhitener@eac.gov
10/18/2006 11:09 AM
Subject Media inquiry RE: fraud research

008282

Hello everyone,

Brian Friel of the National Journal has posed the following questions regarding the fraud report. Since we know this is something everyone on the Hill will definitely read, I want to make sure everyone agrees with these responses. I need to get this info to him by noon tomorrow.


Tom -- do you want me to run this language by the commissioners?

1. Are there any plans to release voter fraud report since several groups have called for its release; or if there is some procedure that would be necessary for EAC to determine that it should be released? The status report created by EAC staff was presented to EAC's Board of Advisors and Standards Board to provide an update on the research project. This meeting was open to the public. As a small agency of only 23 employees, including four commissioners, it is necessary for EAC to contract with third parties and experts to conduct research. The information provided by third parties is used by staff to develop EAC final policy or reports. No documents, drafts, or recommendations presented to EAC by third parties constitute official EAC policy. Currently, EAC staff is reviewing the data presented regarding voter fraud and intimidation and will produce a final report in the near future.

Is the fourth position still vacant and does this impact the decision for release of the report. There is a vacancy on the commission, but the vacancy has not impacted the timeline for releasing the fraud report.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Karen Lynn-Dyson/EAC/GOV
09/02/2005 04:19 PM

To Karen Lynn-Dyson/EAC/GOV@EAC, Nicole
Mortellito/CONTRACTOR/EAC/GOV@EAC
cc jthompson@eac.gov, nmortellito@eac.gov, sda@mit.edu,
"Job Serebrov" <serebrov@sbcglobal.net>,
twilkey@eac.gov, wang@tcf.org
bcc
Subject Re: Kick off activities for the EAC Voting fraud/voter
intimidation project 

All-

In anticipation of our 45-minute conference call scheduled for Tuesday, September 6 at 4:00 PM, I would ask the three consultants (Steve, Job and Tova) to come prepared to talk about the following:

The major topics and issues which you see as needing immediate attention, definition,delineation,etc.
Rough timelines and timeframes for addressing these major issues and topics
Your major roles and responsibilities and the timelines you envision for meeting your major deliverables

We all realize that this conversation is just a start; I look forward to this beginning and to framing the tasks that lie ahead of us between now and September 30.

Have a wonderful holiday!!

K
Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

008284

Karen Lynn-Dyson/EAC/GOV

08/23/2005 05:44 PM

To Thomas R. Wilkey/EAC/GOV@EAC, sda@mit.edu,
wang@tcf.org, serebrov@sbcglobal.net

cc Margaret Sims/EAC/GOV@EAC

bcc Juliet E. Thompson/EAC/GOV

Subject Kick off activities for the EAC Voting fraud/voter intimidation
project

Greetings-

Tom Wilkey and I have just completed a series of very informative and productive conversations with each of you and are anxious to move to the next step of this process.

We hope to assemble our consultant team on this project, within the next three weeks and are presently awaiting final approval of your contracts from our Commissioners. We anticipate this will take place in the next week to ten days.

We would like to assemble the team- Steve Ansolabehere of MIT, Tova Wang from The New Century Foundation and Job Serebrov, who has worked extensively on these issues for the State of Arkansas, during the week of September 11. Please get back to us with some tentative dates during that week that might work with your schedule.

We look forward to working with all of you and appreciate your efforts on behalf of the EAC.

Regards-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
tel:202-566-3123

008285

Karen Lynn-Dyson/EAC/GOV

08/17/2005 04:29 PM

To Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC

cc Thomas R. Wilkey/EAC/GOV@EAC, Margaret
Sims/EAC/GOV@EAC, Diana Scott/EAC/GOV@EAC, Juliet
E. Thompson/EAC/GOV@EAC

bcc

Subject Statement of Work to be circulated to the voting fraud/voter
intimidation consultant candidates

Nicole-

Attached please find the Statement of Work which should be sent to each of the three candidates who are
being considered for the consulting position:

Steve A.
Tova W.
Job S.

Please be certain they are sent separately and not collectively to all three and that it is sent by COB
today.

Thanks so much for your help.

K



voterfraud project consultants.doc

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
tel:202-566-3123

008286

Statement of Work

Assistance with developing an Election Assistance Commission (EAC) Voting Fraud and Voter Intimidation Project

Background

Section 241 of HAVA enumerates a number of periodic studies of election administration issues in which the U.S. Election Assistance Commission may elect to engage. In general "On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b)"

Sections 241(b) (6) and (7) list the following election administration issues:

(6) Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices.

(7) Identifying, deterring and investigating methods of voter intimidation.

Building on this HAVA reference to studies of voting fraud and voter intimidation, the EAC Board of Advisors has indicated that further study of these issues to determine how the EAC might respond to them is a high priority.

The U.S. Election Assistance Commission (EAC) seeks to identify one or more senior-level project consultants to develop various project activities and studies related to voting fraud and voter intimidation affecting Federal elections.

The consultant(s) must of have knowledge of voting fraud and voter intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and with the law. The consultant (s) must be able to demonstrate an ability to approach the issues of voting fraud and voter intimidation in a balanced, nonpartisan fashion.

Duties

The consultant(s), whose contract would run for the period September-February, 2005, would be responsible for the following.

1. Identifying what constitutes voting fraud and voter intimidation affecting Federal elections.
2. Performing background research, including Federal and state-by state administrative and case law review related to voting fraud and voter intimidation, and a review of current voting fraud and voter intimidation activities taking place with key government agencies, civic and advocacy organizations. A written summary of this research, and a copy of any source documentation used, will be presented to EAC.
3. Identifying, in consultation with EAC, and convening a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation. The working group's goals and objectives and meeting agendas will be vetted with key EAC staff.
4. Developing a project scope of work and a project work plan related to voting fraud and voter intimidation. The consultants (s) will develop a draft scope of work and project work plan for EAC's consideration based on research into the topics, the deliberations and findings of the working group, and the consultants' understanding of EAC's mission and agency objectives.
5. Authoring a report summarizing the key findings of this preliminary study of voting fraud and voter intimidation. The report will also include suggestions for specific activities that EAC may undertake to address these topics.

From this initial research and exploration of these topics the consultant (s) may be retained to help oversee follow-on research projects and contracts EAC may pursue on the topics of voting fraud and voter intimidation.

Special Considerations

Work for Hire. The services performed under the terms of this agreement are considered "work for hire," and any intellectual property or deliverables, including but not limited to, research, policies, procedures, manuals, and other works submitted; or which are specified to be delivered; or which are developed or produced and paid for by EAC, shall be owned exclusively by EAC, including copyright. EAC or its assignees have the exclusive right to reproduce all work products from this agreement without further payment to the Contractor.

Terms and Conditions

The period of performance for this consulting contract is six months, with a fixed price ceiling of \$XXXXXX for labor. The consultant (s) is expected to work at least 200 hours in performing this work. The EAC estimates that the most efficient distribution of these hours would be as follows: XXXXXX. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, as required.

The Consultant is required to travel to the EAC Washington, D.C. offices on a periodic, as needed basis, throughout the duration of the contract. The Consultant will be reimbursed, at the Federal government rates, for hotel and ground transportation costs, other approved incidental expenses, and per diem costs while working on-site at the EAC offices. An estimated \$XXXXXX has been allocated for reimbursement for travel and other allowable expenses.

Invoicing

Invoices may be submitted monthly in equal payments for labor. Expenses claimed for reimbursement shall be itemized with appropriate receipts provided. Invoices shall be delivered to Ms. Diana Scott, Administrative Officer, U.S. Election Assistance Commission, 1225 New York Avenue, N.W., Suite 1100, Washington DC 20005.

Deliverables and Timetable

Deliverable	Due Date
Draft project work plan (Phase I)	ASAP after award
Progress Reports to Contracting Officer's Representative (COR)	Monthly
A written summary of background research on voting fraud and voter intimidation.	TBD
Identifying and convening a working group knowledgeable about voting fraud and voter intimidation.	TBD
Developing a project scope of work and project work plan (Phase II)	TBD
Summary report describing key findings of this preliminary study of voting fraud and voter intimidation	TBD

Karen Lynn-Dyson/EAC/GOV

08/16/2005 02:52 PM

To Carol A. Paquette/EAC/GOV@EAC, Diana
Scott/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC
cc Juliet E. Thompson/EAC/GOV@EAC, Nicole
Mortellito/CONTRACTOR/EAC/GOV@EAC

bcc

Subject Finishing touches on the Statement of Work for the Voter
Fraud/Intimidation consultants

History

This message has been replied to

All-

This morning the Commissioners approved the Statement of Work for the Voter Fraud/Voter Intimidation project consultants, with the caveat that some additional language would be added and the SOW polished up.

Tom, Peg and I are scheduled to interview the first candidate tomorrow morning at 10:00 am and will need your edits to this SOW by COB today.

I am attaching the item again, just in case you don't have a copy. Since I have an appointment out of the office and will be leaving at 4:00 today, I ask that you get your changes and edits to Nicole so that she may enter them and get the revised copy to the candidate first thing in the morning.

Thanks for your input on this.



voterfraud project consultants.2.doc

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue, NW Suite 1100
Washington, DC 20005
tel:202-566-3123

008290

Statement of Work

Assistance with developing an Election Assistance Commission (EAC) Voter Fraud and Voter Intimidation Project

Background

Section 241 of HAVA enumerates a number of periodic studies of Election Administrations issues in which the U.S. Election Assistance Commission may elect to engage. In general "On such periodic basis as the Commission may determine, the Commission shall conduct and make available to the public studies regarding the election administration issues described in subsection (b), with the goal of promoting methods of voting and administering elections...."

Specifically, Section 241b 6 and 7 describes Election administration issues such as:

6. Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices and

7. Identifying, deterring and investigation methods of voter intimidation.

Building on this HAVA reference to studies of voter fraud and voter intimidation, the EAC Board of Advisors has indicated a priority interest in further study of these issues to determine how the EAC might respond to them.

The U.S. Election Assistance Commission (EAC) seeks to identify senior-level project consultants to develop various project activities and studies related to U.S. election voter fraud and voter intimidation.

The consultant(s) must of have knowledge of voter fraud and intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and the law. The consultant (s) must be able to demonstrate an ability to approach the issues of voter fraud and intimidation in a balanced, nonpartisan fashion.

Duties

The consultant (s), whose contract would run for the period September-February, 2005, would be responsible for the following.

1. Performing background research, including a state-by state administrative and case law review related to voter fraud and intimidation, and a review of current voter fraud and intimidation activities taking place with key government agencies, civic and advocacy organizations. This review will be summarized and presented to the EAC.
2. Identifying and convening a working group of key individuals and organizations knowledgeable about the topics of voter fraud and intimidation. The list of working group members and the methods used to identify the groups members will be shared with EAC staff prior to the confirmation of the working group. The working group's goals and objectives and meeting agendas will be vetted with key EAC staff.
3. Developing a project scope of work and a project work plan related to voter fraud and intimidation. Based on research into the topics, the deliberations and findings of the working group, and the consultants' understanding of the EAC's mission and agency objectives, the consultants will develop a draft scope of work and project work plan for the EAC's consideration.
4. Authoring a report summarizing the key findings of this preliminary study of voter fraud and intimidation. The report will also include suggestions for specific activities the EAC may undertake around these topics.

From this initial research and exploration of these topics the consultant (s) may be retained to help oversee follow-on research projects and contracts EAC may develop on the topics of voter fraud and intimidation.

Special Considerations

Work for Hire Agreement (insert language)

Terms and Conditions

The period of performance for this consulting contract is six months, with a fixed price ceiling of \$XXXXXX for labor. The consultant (s) is expected to work at least 200 hours in performing this work. The EAC estimates that the most efficient distribution of these hours would be as follows: XXXXXX. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, as required.

Karen Lynn-Dyson/EAC/GOV

08/04/2005 05:01 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Carol A. Paquette/EAC/GOV@EAC, Diana Scott/EAC/GOV@EAC, Juliet E. Thompson/EAC/GOV@EAC
cc Nicole Mortellito/CONTRACTOR/EAC/GOV@EAC, Barbara A. Costopoulos/CONTRACTOR/EAC/GOV@EAC

bcc

Subject Finalizing a Statement of Work for consultants working on a voter fraud and intimidation project

Greetings-

Tom Wilkey and I are working to schedule a series of conference calls with three consultants we have identified to work with us to help us develop the voter fraud and voter intimidation project.

We have tentatively scheduled a series of telephone interviews with these three consultants (all of whom would be hired to work on this project) for August 17, 18 and 19.

Attached you will find a draft of a Statement of Work that has been developed for these consultants. Dan Murphy's contract was used as a template for this.

I've sent this document to you all because I need your edits and corrections to this document, based on your expertise either in contracting, human resources or the subject area.

Since Tom and I will be interviewing the candidates in two weeks, I'm hoping you can react to the document and get to Tom and Nicole your changes by mid-week next week.

I will then ask Nicole to send the draft statement of work to the three candidates, so they might refer to it, prior to our interviews.

Thanks for your input and assistance.



K voterfraud project consultants.doc

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

008293

Statement of Work

Assistance with developing an Election Assistance Commission (EAC) Voter Fraud and Voter Intimidation Project

Background

Section 241 of HAVA enumerates a number of periodic studies of Election Administrations issues in which the U.S. Election Assistance Commission may elect to engage. Specifically, Section 241b 6 and 7 describe Election administration issues such as:

6. Nationwide statistics and methods of identifying, deterring and investigating voting fraud in election for Federal offices and
7. Identifying, deterring and investigation methods of voter intimidation.

Building on this reference to studies of voter fraud and voter intimidation, the EAC Board of Advisors has indicated a priority interest in further study of this issue to determine how the EAC might respond to it.

The U.S. Election Assistance Commission (EAC) seeks to identify senior-level project consultants to develop various project activities and studies related to U.S. election voter fraud and voter intimidation.

The consultant(s) must of have knowledge of voter fraud and intimidation along with an understanding of the complexities, nuances and challenges which surround the topics. The EAC is particularly interested in candidates with experience in elections, with public policy and the law. The consultant (s) must be able to demonstrate an ability to approach the issues of voter fraud and intimidation in a balanced, nonpartisan fashion.

Duties

The consultant (s), whose contract would run for the period September-February, 2005, would be responsible for the following.

1. Performing background research, including a state-by state administrative and case law review related to voter fraud and intimidation, and a review of current voter fraud and intimidation activities taking place with key government agencies, civic and advocacy organizations. This review will be summarized and presented to the EAC.

2. Identifying and convening a working group of key individuals and organizations knowledgeable about the topics of voter fraud and intimidation. The list of working group members and the methods used to identify the groups members will be shared with EAC staff prior to the confirmation of the working group. The working group's goals and objectives and meeting agendas will be vetted with key EAC staff.
3. Developing a project scope of work and a project work plan related to voter fraud and intimidation. Based on research into the topics, the deliberations and findings of the working group, and the consultants' understanding of the EAC's mission and agency objectives, develop a draft scope of work and project work plan for the EAC's consideration.
4. Authoring a report summarizing the key findings of this preliminary study of voter fraud and intimidation. The report will also include suggestions for specific activities the EAC may undertake around these topics.

From this initial research and exploration of these topics the consultant (s) may be retained to help oversee follow-on research projects and contracts EAC may develop on the topics of voter fraud and intimidation.

Special Considerations

The Consultants will be required to sign a Non-Disclosure Agreement???

The Consultants are also required to sign a Conflict of Interest declaration???

Terms and Conditions

The period of performance for this consulting contract is six months, with a fixed price ceiling of \$XXXXXX for labor. The consultant (s) is expected to work at least 200 hours in performing this work. The EAC estimates that the most efficient distribution of these hours would be as follows: XXXXX. The period of performance and level of effort can be revised in writing by mutual agreement of the EAC and the consultant, as required.

Karen Lynn-Dyson/EAC/GOV

06/21/2005 01:27 PM

To Raymundo Martinez/EAC/GOV@EAC

cc Gracia Hillman/EAC/GOV@EAC, Paul
DeGregorio/EAC/GOV@EAC, Thomas R.
Wilkey/EAC/GOV@EAC, Juliet E.

bcc

Subject Your recommendations for consultants to help frame EAC's
work on voter fraud and intimidation

Ray-

As was discussed yesterday- you will get me the names of consultants and organizations who you think will be good for us to consider employing as consultants to help us frame our work around voter fraud and intimidation.

Once I have a list of names and resumes, I will work with Tom Wilkey to come up with a recommendation of a consultant or consultants to use on this project.

Thanks for your input.

K

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

008296

Karen Lynn-Dyson/EAC/GOV

05/25/2005 12:55 PM

To Paul DeGregorio/EAC/GOV@EAC, Raymundo
Martinez/EAC/GOV@EAC

cc Juliet E. Thompson/EAC/GOV@EAC

bcc

Subject Job Description for a Voter Fraud Project Consultant

Commissioners-

Attached please find a first draft of a short job description outlining EAC's expectations for a project consultant on voter fraud.

As you are aware, Julie has shared with me the resume of someone with an interest in the position. Ray has indicated that he participates in a legal list-serve group that has recently focused on voter fraud issues. This list-serve is probably a good place to "advertise" the consultant opportunity.

Let me know your thoughts on next steps. I look forward to getting this project up and running.

Regards-

K



voterfraud project manager.doc

Karen Lynn-Dyson

Research Manager

U.S. Election Assistance Commission

1225 New York Avenue , NW Suite 1100

Washington, DC 20005

tel:202-566-3123

008297

Job Description**U.S. Election Assistance Commission (EAC) Voter Fraud Project Consultant**

The U.S. Election Assistance Commission (EAC) seeks to identify a senior-level project consultant to assist with the oversight and development of a study and possible project examining U.S. election voter fraud.

The consultant must of have a knowledge of voter fraud and an understanding of the complexities, nuances and challenges which surround the topic. The EAC is particularly interested in candidates with experience in elections, with public policy and the law. The consultant must be able to demonstrate an ability to approach the issue of voter fraud in a balanced, nonpartisan fashion.


This consultant, whose contract would run for the period June-November, 2005, would be responsible for conceptualizing a project scope of work around the issue and from that, developing a statement of work for a research project around the topic.

In consultation with EAC staff, EAC Commissioners, and other key EAC stakeholders, the consultant will develop a project plan around voter fraud. The consultant will recommend certain EAC project activities related to voter fraud and will develop a scope of work for an EAC research study on voter fraud. The consultant will oversee and manage various processes related to EAC contracts awarded for work related to voter fraud.

EAC's consultant fees are competitive and are awarded based on the candidates' relevant background and experience.

**Deliberative Process
Privilege**

Margaret Sims /EAC/GOV
11/26/2006 09:39 PM


To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Re: Draft Voter Fraud/Voter Intimidation Report 

Julie:

I reviewed our materials and refreshed my memory. The DOJ issues appear to be the only potential pitfalls in the consultants' interview summaries. The only other issue that arose during the course of the work was Secretary Rokita's objection to EAC doing the research. I think you have taken care of that in your paper. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV
11/17/2006 04:05 PM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Draft Voter Fraud/Voter Intimidation Report 

Thanks so much for all of your help. Have a very Happy Thanksgiving.


Sent from my BlackBerry Wireless Handheld
Margaret Sims
----- Original Message -----

From: Margaret Sims
Sent: 11/17/2006 02:54 PM
To: Juliet Hodgkins
Subject: Re: Draft Voter Fraud/Voter Intimidation Report

I'll need to refresh my memory. I'll take a look at them one more time and get back to you. Hope you enjoy your time out of the office, and have a happy turkey day. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV
11/17/2006 09:44 AM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Draft Voter Fraud/Voter Intimidation Report 

Thanks for your comments.

Last night, I took the case charts and assembled into one 200 -page document. So, that is compiled. I have also amended to include Job and Tova's bios as appendix "1". I have established both your summaries and theirs into alternative appendixes and will talk to the commissioners about that. One question that I have is whether we would need to go through and "clean up" their summaries? I have compiled them into a single document (that is one for interviews and one for literature). Other than the

008299

DOJ issue, are there any other "problems" that you recall?

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

008300

**Deliberative Process
Privilege**

Margaret Sims/EAC/GOV

11/17/2006 02:54 PM

To Juliet E. Hodgkins/EAC/GOV@EAC

cc

bcc

Subject Re: Draft Voter Fraud/Voter Intimidation Report 

History:  This message has been replied to

I'll need to refresh my memory. I'll take a look at them one more time and get back to you. Hope you enjoy your time out of the office, and have a happy turkey day. --- Peggy

Juliet E. Hodgkins/EAC/GOV

Juliet E. Hodgkins/EAC/GOV

11/17/2006 09:44 AM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Re: Draft Voter Fraud/Voter Intimidation Report 


Thanks for your comments.

Last night, I took the case charts and assembled into one 200 -page document. So, that is compiled. I have also amended to include Job and Tova's bios as appendix "1". I have established both your summaries and theirs into alternative appendixes and will talk to the commissioners about that. One question that I have is whether we would need to go through and "clean up" their summaries? I have compiled them into a single document (that is one for interviews and one for literature). Other than the DOJ issue, are there any other "problems" that you recall?

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

008301


Margaret Sims /EAC/GOV
10/11/2006 02:37 PM

To Jeannie Layson/EAC/GOV@EAC
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,
bwhitener@eac.gov
bcc
Subject Re: Voting Fraud-Voter Intimidation Report 

The answer is tricky. The working group met *after the written report was submitted* for the board meetings, but *before the status report was formally presented* (orally) at the board meetings. --- Peggy

Jeannie Layson/EAC/GOV


Jeannie Layson /EAC/GOV
10/11/2006 02:27 PM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Voting Fraud-Voter Intimidation Report 

So the answer is yes, they did meet after the status report was presented?

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov
Margaret Sims/EAC/GOV


Margaret Sims /EAC/GOV
10/11/2006 02:26 PM

To Jeannie Layson/EAC/GOV@EAC
cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,
bwhitener@eac.gov
Subject Re: Voting Fraud-Voter Intimidation Report 

The status report was written on May 17, 2006 (the last day it could be submitted for the upcoming board meetings). The first and only meeting of the working group was May 18, 2006. --- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV
10/11/2006 02:06 PM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Voting Fraud-Voter Intimidation Report 

008302

Yes, that is what prompted my question. So the answer is no -- they have not met since May 17?

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

008303

Margaret Sims /EAC/GOV

10/11/2006 01:45 PM

To Jeannie Layson/EAC/GOV@EAC

cc twilkey@eac.gov, Juliet E. Hodgkins/EAC/GOV@EAC,
bwhitener@eac.gov

bcc

Subject Re: Voting Fraud-Voter Intimidation Report 

I would hope that we can refer to it as a status report on the research project (prepared by EAC staff based upon information available at the time from our consultants, Tova and Job). Calling it a preliminary report has given rise to some confusion. That confusion has led to complaints from project working group members and requests from outsiders, who mistakenly think that EAC has released the document written by our consultant that fully reports on the preliminary research into voting fraud and voter intimidation and makes recommendations for future EAC action. --- Peggy

Jeannie Layson/EAC/GOV

Jeannie Layson /EAC/GOV

10/11/2006 12:33 PM

To Margaret Sims/EAC/GOV@EAC

cc

Subject Re: Voting Fraud-Voter Intimidation Report 

Thanks for the update. Per legal, the preliminary report is absolutely public information which is why we had to give it to the reporter when he asked for it.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

008304

Margaret Sims /EAC/GOV
10/11/2006 12:34 PM

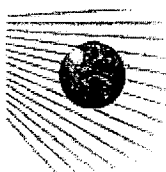
To Paul DeGregorio/EAC/GOV@EAC, Jeannie Layson/EAC/GOV@EAC, twilkey@eac.gov
cc Amie J. Sherrill/EAC/GOV@EAC, Juliet E. Hodgkins/EAC/GOV@EAC, Bryan Whitener/EAC/GOV@EAC, Tamar Nedzar/EAC/GOV@EAC
bcc

Subject Re: Voting Fraud-Voter Intimidation Report

Just a note to clarify that we are not releasing the preliminary report on voting fraud and voter intimidation (Tova & Job's report) because the draft report is going through EAC review. The only document we can offer at this time is the status report on the research project, which was delivered to our boards and which apparently is considered public information. The status report does not address any recommendations for future EAC action.

I am using some of my work at home time on the draft report. Hopefully, I can meet with Julie and Tamar next week. After that, we will have a better idea of when it will be ready for a Commissioner briefing. ---
Peggy

Paul DeGregorio/EAC/GOV



Paul DeGregorio /EAC/GOV
10/11/2006 10:20 AM

To Jeannie Layson/EAC/GOV@EAC
cc Amie J. Sherrill/EAC/GOV@EAC, Margaret Sims/EAC/GOV@EAC
Subject Re: Interview Request

Find a time that works. There's a story in today's St Louis PD that points to over 1000 suspect voter registrations.

Sent from my BlackBerry Wireless Handheld

----- Original Message -----

From: Jeannie Layson
Sent: 10/11/2006 10:15 AM
To: Paul DeGregorio
Cc: Amie Sherrill; Margaret Sims
Subject: Interview Request

Mr. Chairman,

Will Lester of the Associated Press wants to interview you briefly via phone about the preliminary fraud report. I recommend you accomodate him, as he has dutifully covered EAC, and plans to include us in a story next week about the election lanscape. He has requested a copy of the preliminary report, which I am sending to him. He only needs a few minutes, and as we discussed, i think the message is that these are preliminary findings that we presented to our advisory boards to get their input. When the final report is

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complete, we will release it. You can also use some of the talking pts from your speech, such as the challenge related to the very definition of the term "fraud," as people define it differently. How about I set it up for noon?

The only question he asked that I don't know the answer to is when we expect the final report. Peg... please weigh in on this.

Jeannie Layson
U.S. Election Assistance Commission
1225 New York Ave., NW
Suite 1100
Washington, DC 20005
Phone: 202-566-3100
www.eac.gov

Margaret Sims /EAC/GOV
09/27/2006 12:51 PM

To bwhitener@eac.gov
cc Juliet E. Hodgkins/EAC/GOV@EAC, Karen
Lynn-Dyson/EAC/GOV@EAC
bcc
Subject Status Report on Voting Fraud-Voter Intimidation Study

Bryan:

An electronic copy of the status report is attached, as requested for the USA Today inquiry. The status report includes the attachment listing the Working Group members. I suggest that you check to ensure that I have protected the copy against any manipulation, and protect it yourself if I have not, before sending it out to anyone. --- Peggy



EAC Boards VF-VI Status Report.doc

008307

***Deliberative Process
Privilege***



U.S. ELECTION ASSISTANCE COMMISSION

**Status Report on the
Voting Fraud-Voter Intimidation Research
Project**

May 17, 2006

008308

INTRODUCTION

Section 241 of the Help America Vote Act of 2002 (HAVA) requires EAC to conduct research on election administration issues. Among the tasks listed in the statute is the development of:

- nationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office [section 241(b)(6)]; and
- ways of identifying, deterring, and investigating methods of voter intimidation [section 241(b)(7)].

EAC's Board of Advisors recommended that the agency make research on these matters a high priority.

FOCUS OF CURRENT RESEARCH

In September 2005, the Commission hired two consultants with expertise in this subject matter, Job Serebrov and Tova Wang, to:

- develop a comprehensive description of what constitutes voting fraud and voter intimidation in the context of Federal elections;
- perform background research (including Federal and State administrative and case law review), identify current activities of key government agencies, civic and advocacy organizations regarding these topics, and deliver a summary of this research and all source documentation;
- establish a project working group, in consultation with EAC, composed of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation;
- provide the description of what constitutes voting fraud and voter intimidation and the results of the preliminary research to the working group, and convene the working group to discuss potential avenues for future EAC research on this topic; and
- produce a report to EAC summarizing the findings of the preliminary research effort and working group deliberations that includes recommendations for future research, if any;

As of the date of this report, the consultants have drafted a definition of election fraud, reviewed relevant literature and reports, interviewed persons from government and private sectors with subject matter expertise, analyzed news reports of alleged election fraud, reviewed case law, and established a project working group.

DEFINITION OF ELECTION FRAUD

The consultants drafted a definition of election fraud that includes numerous aspects of voting fraud (including voter intimidation, which is considered a subset of voting fraud) and voter registration fraud, but excludes campaign finance violations and election administration mistakes. This draft will be discussed and probably refined by the project working group, which is scheduled to convene on May 18, 2006.

LITERATURE REVIEW

The consultants found many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. They found little research that is truly systematic or scientific. The most systematic look at fraud appears to be the report written by Lori Minnite, entitled "Securing the Vote: An Analysis of Election Fraud". The most systematic look at voter intimidation appears to be the report by Laughlin McDonald, entitled "The New Poll Tax". The consultants found that books written about this subject all seem to have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Moreover, the consultants found that reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund's frequently cited book, "Stealing Elections".

Consultants found that researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate; but some reports say it is a major problem, albeit hard to identify.

- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.
- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

Recommendations

The consultants recommend that subsequent EAC research include a follow up study of allegations made in reports, books and newspaper articles. They also suggest that the research should focus on filling the gap between the lack of reports based on methodical studies by social or political scientists and the numerous, but less scientific, reports published by advocacy groups.

INTERVIEWS

The consultants jointly selected experts from the public and private sector for interviews. The consultants' analysis of their discussions with these members of the legal, election official, advocacy, and academic communities follows.

Common Themes

- There is virtually universal agreement that absentee ballot fraud is the biggest problem, with vote buying and registration fraud coming in after that. The vote buying often comes in the form of payment for absentee ballots, although not always. Some absentee ballot fraud is part of an organized effort; some is by individuals, who sometimes are not even aware that what they are doing is illegal. Voter registration fraud seems to take the form of people signing up with false names. Registration fraud seems to be most common where people doing the registration were paid by the signature.
- There is widespread but not unanimous agreement that there is little polling place fraud, or at least much less than is claimed, including voter impersonation, "dead" voters, noncitizen voting and felon voters. Those few who believe it occurs often enough to be a concern say that it is impossible to show the extent to which it happens, but do point to instances in the press of such incidents. Most people believe that false registration forms have not resulted in polling place fraud,

although it may create the perception that vote fraud is possible. Those who believe there is more polling place fraud than reported/investigated/prosecuted believe that registration fraud does lead to fraudulent votes. Jason Torchinsky from the American Center for Voting Rights is the only interviewee who believes that polling place fraud is widespread and among the most significant problems in the system.

- Abuse of challenger laws and abusive challengers seem to be the biggest intimidation/suppression concerns, and many of those interviewed assert that the new identification requirements are the modern version of voter intimidation and suppression. However there is evidence of some continued outright intimidation and suppression, especially in some Native American communities. A number of people also raise the problem of poll workers engaging in harassment of minority voters. Other activities commonly raised were the issue of polling places being moved at the last moment, unequal distribution of voting machines, videotaping of voters at the polls, and targeted misinformation campaigns.
- Several people indicate that, for various reasons, DOJ is bringing fewer voter intimidation and suppression cases now, and has increased its focus on matters such as noncitizen voting, double voting, and felon voting. Interviews with DOJ personnel indicate that the Voting Section, Civil Rights Division, focuses on systemic patterns of malfeasance in this area. While the Election Crimes Branch, Public Integrity Section, continues to maintain an aggressive pursuit of systematic schemes to corrupt the electoral process (including voter suppression), it also has increased prosecutions of individual instances of felon, alien, and double voting.
- The problem of badly kept voter registration lists, with both ineligible voters remaining on the rolls and eligible voters being taken off, remains a common concern. A few people are also troubled by voters being on registration lists in two states. They said that there was no evidence that this had led to double voting, but it opens the door to the possibility. There is great hope that full implementation of the new requirements of HAVA – done well, a major caveat – will reduce this problem dramatically.

Common Recommendations:

- Many of those interviewed recommend better poll worker training as the best way to improve the process; a few also recommended longer voting times or voting on days other than election day (such as weekends) but fewer polling places so only the best poll workers would be employed.
- Many interviewed support stronger criminal laws and increased enforcement of existing laws with respect to both fraud and intimidation. Advocates from across the spectrum expressed frustration with the failure of the Department of Justice to pursue complaints.

- With respect to DOJ's Voting Section, Civil Rights Division, John Tanner indicated that fewer cases are being brought because fewer are warranted – it has become increasingly difficult to know when allegations of intimidation and suppression are credible since it depends on one's definition of intimidation, and because both parties are doing it. Moreover prior enforcement of the laws has now changed the entire landscape – race based problems are rare now. Although challenges based on race and unequal implementation of identification rules would be actionable, Mr. Tanner was unaware of such situations actually occurring and his office has not pursued any such cases.
- Craig Donsanto of DOJ's Election Crimes Branch, Public Integrity Section, says that while the number of election fraud related complaints have not gone up since 2002, nor has the proportion of legitimate to illegitimate claims of fraud, the number of cases DOJ is investigating and the number of indictments his office is pursuing are both up dramatically. Since 2002, in addition to pursuing systematic election corruption schemes, DOJ has brought more cases against alien voters, felon voters and double voters than ever before. Mr. Donsanto would like more resources so that his agency can do more and would like to have laws that make it easier for the federal government to assume jurisdiction over voter fraud cases.
- A couple of interviewees recommend a new law that would make it easier to criminally prosecute people for intimidation even when there is not racial animus.
- Several advocate expanded monitoring of the polls, including some associated with the Department of Justice.
- Almost everyone hopes that administrators will maximize the potential of statewide voter registration databases to prevent fraud.
- Challenge laws, both with respect to pre-election day challenges and challengers at the polls, need to be revised by all states to ensure they are not used for purposes of wrongful disenfranchisement and harassment.
- Several people advocate passage of Senator Barak Obama's "deceptive practices" bill.
- There is a split on whether it would be helpful to have nonpartisan election officials – some indicated they thought even if elections officials are elected as non partisan officials, they will carry out their duties in biased ways nonetheless. However, most agree that elections officials pursuing partisan agendas are a problem that must be addressed in some fashion. Suggestions included moving election responsibilities out of the secretary of states' office; increasing transparency in the process; and enacting conflict of interest rules.

- A few recommend returning to allowing use of absentee ballots “for cause” only if it were politically feasible.
- A few recommend enacting a national identification card, including Pat Rogers, an attorney in New Mexico, and Jason Torchinsky from ACVR, who advocates the proposal in the Carter-Baker Commission Report.
- A couple of interviewees indicated the need for clear standards for the distribution of voting machines

NEWS ARTICLES

Consultants conducted a Nexis search of related news articles published between January 1, 2001 and January 1, 2006. A systematic, numerical analysis of the data collected during this review is currently being prepared. What follows is an overview of these articles provided by the consultants.

Absentee Ballots

According to press reports, absentee ballots are abused in a variety of ways:

- Campaign workers, candidates and others coerce the voting choices of vulnerable populations, usually elderly voters.
- Workers for groups and individuals have attempted to vote absentee in the names of the deceased.
- Workers for groups, campaign workers and individuals have attempted to forge the names of other voters on absentee ballot requests and absentee ballots and thus vote multiple times.

It is unclear how often actual convictions result from these activities (a handful of articles indicate convictions and guilty pleas), but this is an area in which there have been a substantial number of official investigations and actual charges filed, according to news reports where such information is available. A few of the allegations became part of civil court proceedings contesting the outcome of the election.

While absentee fraud allegations turn up throughout the country, a few states have had several such cases. Especially of note are Indiana, New Jersey, South Dakota, and most particularly, Texas. Interestingly, there were no articles regarding Oregon, where the entire system is vote by mail.

Voter Registration Fraud

According to press reports, the following types of allegations of voter registration fraud are most common:

- Registering in the name of dead people;
- Fake names and other information on voter registration forms;
- Illegitimate addresses used on voter registration forms;
- Voters being tricked into registering for a particular party under false pretenses; and
- Destruction of voter registration forms depending on the party the voter registered with.

There was only one self evident instance of a noncitizen registering to vote. Many of the instances reported included official investigations and charges filed, but few actual convictions, at least from the news reporting. There have been multiple reports of registration fraud in California, Colorado, Florida, Missouri, New York, North Carolina, Ohio, South Dakota, and Wisconsin.

Voter Intimidation and Suppression

This is the area which had the most articles, in part because there were so many allegations of intimidation and suppression during the 2004 election. Most of these remained allegations and no criminal investigation or prosecution ensued. Some of the cases did end up in civil litigation.

This is not to say that these alleged activities were confined to 2004 – there were several allegations made during every year studied. Most notable were the high number of allegations of voter intimidation and harassment reported during the 2003 Philadelphia mayoral race.

A very high number of the articles were about the issue of challenges to voters' registration status and challengers at the polling places. There were many allegations that planned challenge activities were targeted at minority communities. Some of the challenges were concentrated in immigrant communities.

However, the tactics alleged varied greatly. The types of activities discussed also include the following:

- Photographing or videotaping voters coming out of polling places;
- Improper demands for identification;

- Poll watchers harassing voters;
- Poll workers being hostile to or aggressively challenging voters;
- Disproportionate police presence;
- Poll watchers wearing clothes with messages that seemed intended to intimidate; and
- Insufficient voting machines and unmanageably long lines.

Although the incidents reported on occurred everywhere, not surprisingly, many came from “battleground” states. There were several such reports out of Florida, Ohio, and Pennsylvania.

“Dead Voters and Multiple Voting”

There were a high number of articles about people voting in the names of the dead and voting more than once. Many of these articles were marked by allegations of big numbers of people committing these frauds, and relatively few of these allegations turning out to be accurate according to investigations by the newspapers themselves, elections officials, and criminal investigators. Often the problem turned out to be a result of administrative error, poll workers mis-marking voter lists, a flawed registration list and/or errors made in the attempt to match names of voters on the list with the names of the people who voted. In a good number of cases, there were allegations that charges of double voting by political leaders were an effort to scare people away from the voting process.

Nonetheless there were a few cases of people actually being charged and/or convicted for these kinds of activities. Most of the cases involved a person voting both by absentee ballot and in person. A few instances involved people voting both during early voting and on Election Day, which calls into question the proper marking and maintenance of the voting lists. In many instances, the person charged claimed not to have voted twice on purpose. A very small handful of cases involved a voter voting in more than one county and there was one substantiated case involving a person voting in more than one state. Other instances in which such efforts were alleged were disproved by officials.

In the case of voting in the name of a dead person, the problem lay in the voter registration list not being properly maintained, i.e. the person was still on the registration list as eligible to vote, and a person took criminal advantage of that. In total, the San Francisco Chronicle found five such cases in March 2004; the AP cited a newspaper analysis of five such persons in an Indiana primary in May 2004; and a senate committee found two people to have voted in the names of the dead in 2005.

As usual, there were a disproportionate number of such articles coming out of Florida. Notably, there were three articles out of Oregon, which has one hundred percent vote-by-mail.

Vote Buying

There were a surprising number of articles about vote buying cases. A few of these instances involved long-time investigations concentrated in three states (Illinois, Kentucky, and West Virginia). There were more official investigations, indictments and convictions/pleas in this area.

Deceptive Practices

In 2004 there were numerous reports of intentional disinformation about voting eligibility and the voting process meant to confuse voters about their rights and when and where to vote. Misinformation came in the form of flyers, phone calls, letters, and even people going door to door. Many of the efforts were reportedly targeted at minority communities. A disproportionate number of them came from key battleground states, particularly Florida, Ohio, and Pennsylvania. From the news reports found, only one of these instances was officially investigated, the case in Oregon involving the destruction of completed voter registration applications. There were no reports of prosecutions or any other legal proceeding.

Non-citizen Voting

There were surprisingly few articles regarding noncitizen registration and voting – just seven all together, in seven different states across the country. They were also evenly split between allegations of noncitizens registering and noncitizens voting. In one case, charges were filed against ten individuals. In another case, a judge in a civil suit found there was illegal noncitizen voting. Three instances prompted official investigations. Two cases, from this Nexis search, remained just allegations of noncitizen voting.

Felon Voting

Although there were only thirteen cases of felon voting, some of them involved large numbers of voters. Most notably, of course, are the cases that came to light in the Washington gubernatorial election contest (see Washington summary) and in Wisconsin (see Wisconsin summary). In several states, the main problem was the large number of ineligible felons that remained on the voting list.

Election Official Fraud

In most of the cases in which fraud by elections officials is suspected or alleged, it is difficult to determine whether it is incompetence or a crime. There are several cases of ballots gone missing, ballots unaccounted for and ballots ending up in a worker's possession. In two cases workers were said to have changed peoples' votes. The one

instance in which widespread ballot box stuffing by elections workers was alleged was in Washington State. The judge in the civil trial of that election contest did not find that elections workers had committed fraud. Four of the cases are from Texas.

Recommendation

The consultants recommend that subsequent EAC research should include a Nexis search that specifically attempts to follow up on the cases for which no resolution is evident from this particular initial search.

CASE LAW RESEARCH

After reviewing over 40,000 cases from 2000 to the present, the majority of which came from appeals courts, the consultants found comparatively few applicable to this study. Of those that were applicable, the consultants found that no apparent thematic pattern emerges. However, it appears to them that the greatest areas of fraud and intimidation have shifted from past patterns of stealing votes to present problems with voter registration, voter identification, the proper delivery and counting of absentee and overseas ballots, provisional voting, vote buying, and challenges to felon eligibility.

Recommendation

Because so few cases provided a picture of these current problems, consultants suggest that subsequent EAC research include a review of state trial-level decisions.

PROJECT WORKING GROUP

Consultants and EAC worked together to select members for the Voting Fraud-Voter Intimidation Working Group that included election officials and representatives of advocacy groups and the legal community who have an interest and expertise in the subject matter. (See Attachment A for a list of members.) The working group is scheduled to convene at EAC offices on May 18, 2006 to consider the results of the preliminary research and to offer ideas for future EAC activities concerning this subject.

FINAL REPORT

After convening the project working group, the consultants will draft a final report summarizing the results of their research and the working group deliberations. This report will include recommendations for future EAC research related to this subject matter. The draft report will be reviewed by EAC and, after obtaining any clarifications or corrections deemed necessary, will be made available to the EAC Standards Board and EAC Board of Advisors for review and comment. Following this, a final report will be prepared.

Attachment A

Voting Fraud-Voter Intimidation Project Working Group

The Honorable Todd Rokita

Indiana Secretary of State

Member, EAC Standards Board and the Executive Board of the Standards Board

Kathy Rogers

Georgia Director of Elections, Office of the Secretary of State

Member, EAC Standards Board

J.R. Perez

Guadalupe County Elections Administrator, TX

Barbara Arnwine

Executive Director, Lawyers Committee for Civil Rights Under Law

Leader of Election Protection Coalition

(To be represented at May 18, 2006 meeting by Jon M. Greenbaum, Director of the Voting Rights Project for the Lawyers Committee for Civil Rights Under Law)

Robert Bauer

Chair of the Political Law Practice at the law firm of Perkins Coie, DC

National Counsel for Voter Protection, Democratic National Committee

Benjamin L. Ginsberg

Partner, Patton Boggs LLP

Counsel to national Republican campaign committees and Republican candidates

Mark (Thor) Hearne II

Partner-Member, Lathrop & Gage, St Louis, MO

National Counsel to the American Center for Voting Rights

Barry Weinberg

Former Deputy Chief and Acting Chief, Voting Section, Civil Rights Division, U.S. Department of Justice

EAC Invited Technical Advisor:

Craig Donsanto

Director, Election Crimes Branch, U.S. Department of Justice

Margaret Sims/EAC/GOV
09/27/2006 12:18 PM

To pdegregorio@eac.gov
cc
bcc Juliet E. Hodgkins/EAC/GOV
Subject Last Submission from Vote Fraud-Voter Intimidation
Consultants

Dear Mr. Chairman:

The last submission from the Vote Fraud-Voter Intimidation Study consultants is dated August 8. At this time, EAC staff are reviewing all items submitted for the report to the Commission with an eye toward the best way of presenting the information to the Commissioners for their consideration. There has been some delay in this staff review process, for which I take full responsibility.

Peggy Sims
Election Research Specialist

008320

Attorney-Client
Privilege

Deliberative Process
Privilege


Margaret Sims /EAC/GOV
09/25/2006 03:39 PM

To Juliet E. Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Fw: Definition of Voting Fraud and Voter Intimidation

I think this is the communication to which you referred this afternoon. --- Peggy

--- Forwarded by Margaret Sims/EAC/GOV on 09/25/2006 03:39 PM ---

Gavin S. Gilmour/EAC/GOV
11/30/2005 10:19 AM

To Margaret Sims/EAC/GOV@EAC
cc jthompson@eac.gov
Subject Re: Definition of Voting Fraud and Voter Intimidation 

Peggy,

Per our discussion, I have some initial concerns regarding the definitions that have been proposed.

1. Fraud is a legal term of art. Fraud is an intentional act or omission (i.e. actual fraud or constructive fraud) of misrepresentation or deceit. There is no such thing as defacto fraud or quasi fraud. Fraud must be intentional.... negligence alone is not fraud.

The general definition of voter fraud must concise and universally applicable (this in the challenging part). After this definition is created and intellectually tested, one can then create examples and explanations. These would 1) apply the definition to the entire election process (from beginning to end) and (2) apply it to action by voters, 3rd parties and election officials. Through this process a determination may be made regarding whether three definitions are needed or just one.

2. The document has no definition of voter intimidation. What is voter intimidation and how does it differ from voter fraud? I assume this would also be an intentional act.

3. Definitions need to be concise and tight. Such definitions need to be able to be broken down into elements. Each of these elements must have clear, applicable and enforceable meaning. This can be a challenge. For example use of the term "any illegal act" is unclear, begs the question and suggests that fraud only occurs in the course of committing a related crime.

These are just my initial thoughts.

GG
Gavin S. Gilmour
Associate General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV

008321

**Deliberative Process
Privilege**

11/30/2005 09:28 AM

To jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC
cc

Subject Definition of Voting Fraud and Voter Intimidation

Attached discusses the definitions that Job and Tova would like to use. I have already taken issue with the exclusion of all voter registration shenanigans and the inclusion of administrative mistakes. Would be pleased to have your feedback and, if possible, your assistance for 15 minutes of a teleconference today (3:30 PM to 3:45 PM). --- Peggy



combined defining Fraud 11-18-05.doc

008322

"Fraud" should be defined as any illegal act that has a clear and direct distorting impact on the election results. It includes adding illegal votes and tampering with vote counts as well as actions such as voter intimidation and deceptive practices that serve to subtract legal votes. Illegally keeping certain voters from voting has the same distorting effect on election outcomes as ineligible voters casting ballots or some form of modern ballot box stuffing. Fraud may involve wrongdoing by individual voters, election workers or organized groups such as campaigns or political parties.

Vote fraud usually breaks down into three categories---intentional fraud, de facto fraud, and quasi-fraud. Research and investigation of fraud should focus on those forms of fraud that are known to have had true impacts on election outcomes.

"Intentional fraud" includes acts that are intentionally planned. Such forms of fraud include the following:

- Absentee/mail ballot fraud, e.g. coercing another voter's choice, use of a false or other voter's name and signature, destruction or misappropriation of an absentee or mail-in ballot
- Ex-felons knowingly and willingly casting illegal ballots
- Knowingly and willingly misleading an ex-felon about his or her right to vote
- Voting more than once
- Noncitizen voting
- Intimidating practices e.g. intimidating signs, inappropriate police presence, abusive/threatening treatment by poll workers or others that deter voters from voting
- Deceptive practices e.g. providing false information to voters about the voting process, such as when and/or where to vote, who is eligible to vote
- Fraud by election administrators in the handling or counting of ballots, misrepresentation of vote tallies
- Vote buying
- Addition or destruction of cast ballots by elections officials
- Intentional wrongful removal of eligible voters from voter registration lists
- Knowingly falsifying registration information pertinent to eligibility to cast a vote, e.g. residence, criminal status, etc.

The second type of fraud is de facto fraud. This occurs when the intent to commit fraud is lacking, but the party or parties' actions results in fraud nonetheless. De facto fraud more often is a result of a misapplication of election statutes or the application of a long established practice or tradition in a way that contradicts the intent of the statute. Examples of de facto fraud include the abusive use of challengers to voter registrations or to voters' eligibility at the polls and wrongful purging of voter lists.


The last form of fraud, "quasi-fraud," is the most difficult to classify as such because the correct law (case law or legislative act) is applied but the result is to deprive voters of their electoral rights. This type of fraud is also the most difficult to catch because it requires both legal electoral expertise and almost always occurs on the day of the election. One example of this is Arkansas supreme court case law making election

statutes mandatory before an election but discretionary after. The discretion is left up to the county board of election commissioners. These are not elected but are either the chairs of the two main political parties or a person elected by the county central committee should the chair decide not to serve. The result is that election statutes are never enforced after the election. It therefore permits past patterns of fraud to persist.

Two areas that are of major concern but do not come within the purview of fraud for the purposes of this type of research are registration forms in the name of another or fake person(s), which from the evidence do not usually result in illegal votes; and electronic vote machine tampering, for which there is as of now no definitive evidence has taken place in a U.S. election.

**Deliberative Process
Privilege**

Margaret Sims/EAC/GOV
07/11/2006 12:05 PM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC
cc
bcc
Subject Re: Fraud and Intimidation Study 


I think it is this one. --- Peggy



EAC Boards VF-VI Status Report.doc

Juliet E. Thompson-Hodgkins/EAC/GOV

Juliet E.
Thompson-Hodgkins/EAC/G
OV
07/11/2006 11:38 AM

To Margaret Sims/EAC/GOV@EAC
cc
Subject Re: Fraud and Intimidation Study 

Will you please send me a copy of the referenced report?

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV
07/11/2006 10:55 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC
cc "Tom Wilkey" <twilkey@eac.gov>
Subject Re: Fraud and Intimidation Study

It sounds similar to the issues I had with the Donsanto interview. It was a classic example of the interviewers' interpreting what was said through their own biases.

It also is true that the original interview summaries failed to differentiate between the criminal definition of intimidation and the consultants use of the term.. The consultants have revised their definition to note that it goes beyond the legal definition, but we may need to repeat the statement where the DOJ interviews are referenced.

I have already brought the Donsanto matter to our contractors' attention. When they responded that they did not think they should redraft that section, I told them that the section will likely be edited. It appears that we will have to do the same with the reference to Tanner's interview.

Why don't we discuss this with Tanner (and Donsanto) after we have had a chance to review a

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consolidated draft of the final report? We can determine what clarifications or corrections are necessary at that time.

Peg

Sent from my BlackBerry Wireless Handheld
Juliet E. Thompson-Hodgkins

From: Juliet E. Thompson-Hodgkins
Sent: 07/11/2006 09:46 AM
To: Margaret Sims
Subject: Re: Fraud and Intimidation Study

His concerns are that there were inaccurate or false statements about DOJ on pages 5 and 6, that in his words demonstrated a lack of understanding of criminal law.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100
Margaret Sims/EAC/GOV

Margaret Sims /EAC/GOV
07/11/2006 09:26 AM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC
cc
Subject Re: Fraud and Intimidation Study

Perhaps he was looking at the report that was delivered to the EAC boards. Let's find out what his concerns are so that we can address them.
Peg

Sent from my BlackBerry Wireless Handheld
Juliet E. Thompson-Hodgkins

From: Juliet E. Thompson-Hodgkins
Sent: 07/10/2006 02:34 PM
To: Margaret Sims
Subject: Re: Fraud and Intimidation Study

Tanner said he got it from Cameron. And referred specifically to pp. 5 and 6. I don't remember that the summaries of interviews were laid out that way.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

008326

Margaret Sims/EAC/GOV

Margaret Sims/EAC/GOV

07/10/2006 02:29 PM

To Juliet E. Thompson-Hodgkins/EAC/GOV@EAC

cc

Subject Re: Fraud and Intimidation Study

I have not yet seen a draft final report. My best guess is that Tanner is concerned about the summary of his interview. I have already had discussions with our consultants about the description of the Donsanto interview, at which I was present. Wilkey knows that I won't let it go as is. I wasn't at the Tanner interview, but would be interested in hearing where he thinks the consultants went wrong.

It is possible that, due to my objections re the Donsanto interview, the consultants may have asked Tanner to review their description of his interview. I won't know for sure until I can contact them.

I gave you and Gavin a folder that included a summary of interviews, etc before the working group meeting. Also, the report delivered to the boards on this project is in the shared drawer under Research in Progress-Voting Fraud-Intimidation. That is everything I have at the moment.

Peg

Sent from my BlackBerry Wireless Handheld
Juliet E. Thompson-Hodgkins

From: Juliet E. Thompson-Hodgkins
Sent: 07/10/2006 10:55 AM
To: Margaret Sims
Cc: Thomas Wilkey
Subject: Fraud and Intimidation Study

I received a call from John Tanner today who was upset with pages 5 and 6 of some draft paper that he had received regarding our Fraud and Intimidation Study. I am in a very uncomfortable situation in that I have not received a copy of this paper and the Office of General Counsel has not vetted this document and yet I am being questioned about why there are erroneous statements in this paper. Please provide me with a copy of this document and please explain to me how John Tanner got a copy of this document before I did.

Juliet Thompson Hodgkins
General Counsel
United States Election Assistance Commission
1225 New York Ave., NW, Ste 1100
Washington, DC 20005
(202) 566-3100

008327

**Deliberative Process
Privilege**

Margaret Sims /EAC/GOV
05/15/2006 03:51 PM

To pdegregorio@eac.gov, rmartinez@eac.gov,
ddavidson@eac.gov, ghillman@eac.gov
cc twilkey@eac.gov, jthompson@eac.gov, Gavin S.
Gilmour/EAC/GOV@EAC, ecortes@eac.gov, Amie J.
Sherrill/EAC/GOV@EAC, Adam Ambrogio/EAC/GOV@EAC,
bcc
Subject Voting Fraud-Voter Intimidation Project Briefing

Dear Commissioners:

Attached is our consultants' analysis of the literature reviewed for the Voting Fraud-Voter Intimidation preliminary research project. It was not included in the information packets delivered to you on Friday, May 12, because we did not receive it until today. I thought you might be interested in having it. prior to tomorrow's briefing.

Peggy Sims
Election Research Specialist



Literature-Report Review Summary.doc

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Existing Research Analysis

There are many reports and books that describe anecdotes and draw broad conclusions from a large array of incidents. There is little research that is truly systematic or scientific. The most systematic look at fraud is the report written by Lori Minnite. The most systematic look at voter intimidation is the report by Laughlin McDonald. Books written about this subject seem to all have a political bias and a pre-existing agenda that makes them somewhat less valuable.

Researchers agree that measuring something like the incidence of fraud and intimidation in a scientifically legitimate way is extremely difficult from a methodological perspective and would require resources beyond the means of most social and political scientists. As a result, there is much more written on this topic by advocacy groups than social scientists. It is hoped that this gap will be filled in the “second phase” of this EAC project.

Moreover, reports and books make allegations but, perhaps by their nature, have little follow up. As a result, it is difficult to know when something has remained in the stage of being an allegation and gone no further, or progressed to the point of being investigated or prosecuted or in any other way proven to be valid by an independent, neutral entity. This is true, for example, with respect to allegations of voter intimidation by civil rights organizations, and, with respect to fraud, John Fund’s frequently cited book. Again, this is something that it is hoped will be addressed in the “second phase” of this EAC project by doing follow up research on allegations made in reports, books and newspaper articles.

Other items of note:

- There is as much evidence, and as much concern, about structural forms of disenfranchisement as about intentional abuse of the system. These include felon disenfranchisement, poor maintenance of databases and identification requirements.
- There is tremendous disagreement about the extent to which polling place fraud, e.g. double voting, intentional felon voting, noncitizen voting, is a serious problem. On balance, more researchers find it to be less of a problem than is commonly described in the political debate, but some reports say it is a major problem, albeit hard to identify.
- There is substantial concern across the board about absentee balloting and the opportunity it presents for fraud.
- Federal law governing election fraud and intimidation is varied and complex and yet may nonetheless be insufficient or subject to too many limitations to be as effective as it might be.

- Deceptive practices, e.g. targeted flyers and phone calls providing misinformation, were a major problem in 2004.
- Voter intimidation continues to be focused on minority communities, although the American Center for Voting Rights uniquely alleges it is focused on Republicans.

Margaret Sims /EAC/GOV
05/04/2006 02:07 PM

To pdegregorio@eac.gov, rmartinez@eac.gov,
ddavidson@eac.gov, ghillman@eac.gov
cc twilkey@eac.gov, jthompson@eac.gov, Gavin S.
Gilmour/EAC/GOV@EAC, Amie J. Sherrill/EAC/GOV@EAC,
Adam Ambrogi/EAC/GOV@EAC, Elieen L.
bcc
Subject Voting Fraud-Voter Intimidation Working Group Meeting

Dear Commissioners:

This is to let you know that the Working Group for our Voting Fraud and Voter Intimidation preliminary research project is scheduled to meet in EAC's large conference room the afternoon of Thursday, May 18. I will provide more information about this meeting to you later.

Peggy Sims
Election Research Specialist

008331

Margaret Sims /EAC/GOV
01/19/2006 03:26 PM

To jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC
cc Karen Lynn-Dyson/EAC/GOV@EAC
bcc
Subject Extension Needed for Voting Fraud/Voter Intimidation Project
Consultants

The estimated additional hours needed to bring the Voting Fraud/Voter Intimidation Project to a logical stopping point (without requiring a draft statement of work for any future RFPs on the topic) are:

Expert Interviews:

3 hours of scheduling

17 hours conducting the interviews

15 hours summarizing and analyzing the interviews

Subtotal: 35 hours

Nexis research, organization of research, summary of research (Tova): 180 hours

Lexis research, organization of research, summary of research (Job): 180 hours

Subtotal: 360 hours

Working Group preparation and meeting time: 20 hours

Final Report: 45 hours

Grand Total: 460

The sooner we find out if the Commissioners will accept this extension, the better. If the extension (or new contract for 3 additional months) is not accepted, we have to figure out what can be done in the limited time remaining. --- Peggy

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**Deliberative Process
Privilege**

Margaret Sims /EAC/GOV
11/30/2005 09:28 AM

To jthompson@eac.gov, Gavin S. Gilmour/EAC/GOV@EAC
cc
bcc
Subject Definition of Voting Fraud and Voter Intimidation

Attached discusses the definitions that Job and Tova would like to use. I have already taken issue with the exclusion of all voter registration shenanigans and the inclusion of administrative mistakes. Would be pleased to have your feedback and, if possible, your assistance for 15 minutes of a teleconference today (3:30 PM to 3:45 PM). -- Peggy



combined defining Fraud 11-18-05.doc

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"Fraud" should be defined as any illegal act that has a clear and direct distorting impact on the election results. It includes adding illegal votes and tampering with vote counts as well as actions such as voter intimidation and deceptive practices that serve to subtract legal votes. Illegally keeping certain voters from voting has the same distorting effect on election outcomes as ineligible voters casting ballots or some form of modern ballot box stuffing. Fraud may involve wrongdoing by individual voters, election workers or organized groups such as campaigns or political parties.

Vote fraud usually breaks down into three categories---intentional fraud, de facto fraud, and quasi-fraud. Research and investigation of fraud should focus on those forms of fraud that are known to have had true impacts on election outcomes.

"Intentional fraud" includes acts that are intentionally planned. Such forms of fraud include the following:

- Absentee/mail ballot fraud, e.g. coercing another voter's choice, use of a false or other voter's name and signature, destruction or misappropriation of an absentee or mail-in ballot
- Ex-felons knowingly and willingly casting illegal ballots
- Knowingly and willingly misleading an ex-felon about his or her right to vote
- Voting more than once
- Noncitizen voting
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- Deceptive practices e.g. providing false information to voters about the voting process, such as when and/or where to vote, who is eligible to vote
- Fraud by election administrators in the handling or counting of ballots, misrepresentation of vote tallies
- Vote buying
- Addition or destruction of cast ballots by elections officials
- Intentional wrongful removal of eligible voters from voter registration lists
- Knowingly falsifying registration information pertinent to eligibility to cast a vote, e.g. residence, criminal status, etc.

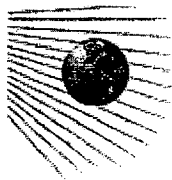
The second type of fraud is de facto fraud. This occurs when the intent to commit fraud is lacking, but the party or parties' actions results in fraud nonetheless. De facto fraud more often is a result of a misapplication of election statutes or the application of a long established practice or tradition in a way that contradicts the intent of the statute. Examples of de facto fraud include the abusive use of challengers to voter registrations or to voters' eligibility at the polls and wrongful purging of voter lists.

The last form of fraud, "quasi-fraud," is the most difficult to classify as such because the correct law (case law or legislative act) is applied but the result is to deprive voters of their electoral rights. This type of fraud is also the most difficult to catch because it requires both legal electoral expertise and almost always occurs on the day of the election. One example of this is Arkansas supreme court case law making election

statutes mandatory before an election but discretionary after. The discretion is left up to the county board of election commissioners. These are not elected but are either the chairs of the two main political parties or a person elected by the county central committee should the chair decide not to serve. The result is that election statutes are never enforced after the election. It therefore permits past patterns of fraud to persist.

Two areas that are of major concern but do not come within the purview of fraud for the purposes of this type of research are registration forms in the name of another or fake person(s), which from the evidence do not usually result in illegal votes; and electronic vote machine tampering, for which there is as of now no definitive evidence has taken place in a U.S. election.

**Deliberative Process
Privilege**



Paul DeGregorio/EAC/GOV
11/17/2005 10:18 AM

To Juliet E. Thompson/EAC/GOV
cc
bcc
Subject Fw: RESPONSE REQUESTED-Working Group for Voting
Fraud and Voter Intimidation Project

Fyi.
Any recommendations?

Sent from my BlackBerry Wireless Handheld

----- Original Message -----
From: Margaret Sims
Sent: 11/16/2005 01:12 PM
To: Gracia Hillman; Paul DeGregorio; Raymundo Martinez;
donetta.davidson@sos.state.co.us
Cc: Sheila Banks; Amie Sherrill; Adam Ambrogi; Elieen Collver; Gavin Gilmour
Subject: RESPONSE REQUESTED-Working Group for Voting Fraud and Voter
Intimidation Project

Dear Commissioners:

The consultants' contracts for EAC's voting fraud and voter intimidation project require Tova Wang and Job Serebrov to work in consultation with EAC staff and the Commissioners "to identify a working group of key individuals and representatives of organizations knowledgeable about the topics of voting fraud and voter intimidation". The contracts do not specify the number of working group members but, as EAC has to pay for the group's travel and we want the size of the group to be manageable, I recommend that we limit the number to 6 or 8. Please let me know if you think that this limit is too conservative .

Attached for your review and comment are two lists of potential working group members for this project. One list was submitted by Job, the other by Tova. Tova and Job have provided brief summaries of each candidate's relevant experience and have placed asterisks next to the names of the individuals whom they particularly recommend. I can provide more extensive biographies of these individuals, if you need them. If EAC agrees that the recommended working group members are acceptable, an equal number may be selected from each list in order to maintain a balanced perspective.

Absent from the attached lists is the name of a representative from the U.S. Department of Justice's Election Crimes Branch. At this time, I am working through the DOJ bureaucracy to determine to what degree Craig Donsanto will be permitted to participate. If he cannot be named as a working group member, we may still be able to use him as a resource.

Please provide your feedback to me no later than Monday , November 28. I am available to meet with you if you would like to discuss this matter further.

Peggy Sims
Research Specialist

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Possible Working Group Members -Serebrov.doc



Possible Working Group Members- Wang.doc

Possible Working Group Members - Serebroy

I recommend the first four with an *

***Mark (Thor) Hearne II**-Counsel to Republican National Committee; National Counsel to American Center for Voting Rights; National election counsel to Bush-Cheney, '04; Testified before U.S. House Administration Committee hearings into conduct of Ohio presidential election; Academic Advisor to Commission on Federal Election Reform (Baker-Carter Commission).

***Todd Rokita**-Secretary of State, Indiana; Secretary Rokita strives to reform Indiana's election practices to ensure Indiana's elections are as fair, accurate and accessible as possible; Secretary Rokita serves on the nine-member Executive Board of the Election Assistance Commission Standards Board, charged by federal law to address election reform issues.

***Patrick J. Rogers**-Partner/Shareholder, Modrall, Sperling, Roehl, Harris and Sisk, P.A., Albuquerque, New Mexico; 1991-2003 General Counsel to the New Mexico Republican Party; Election cases: *The Coalition to Expose Ballot Deception, et al v. Judy N. Chavez, et al*; Second Judicial District Court of Bernalillo County, New Mexico (2005); represented plaintiffs challenging petition procedures; *Miguel Gomez v. Ken Sanchez and Judy Chaves*; Second Judicial District Court of Bernalillo County, New Mexico (2005); residency challenge; *Moises Griego, et al v. Rebecca Vigil-Giron v. Ralph Nader and Peter Miguel Camejo*, Supreme Court for the State of New Mexico (2004); represented Ralph Nader and Peter Camejo, ballot access issues; *Larry Larrañaga, et al v. Mary E. Herrera and Rebecca Vigil-Giron*, Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues; *Decker, et al v. Kunko, et al*; District Court of Chaves County, New Mexico (2004); voter identification and fraudulent registration issues; *Kunko, et al v. Decker, et al*; Supreme Court of New Mexico (2004); voter identification and fraudulent registration issues; *In the Matter of the Security of Ballots Cast in Bernalillo County in the 2000 General Election*; Second Judicial District Court of Bernalillo County, New Mexico (2000); voting and counting irregularities and fraud.

***David A. Norcross**- Partner, Blank Rome LLP, Trenton NJ, Washington D.C; Chairman, New Jersey Republican State Committee, 1977 – 1981; General Counsel, Republican National Committee, 1993 – 1997; General Counsel, International Republican Institute; Counsel, The Center for Democracy; Vice Chairman, Commission on Presidential Debates; Executive Director, New Jersey Election Law Enforcement Commission

Benjamin L. Ginsberg-Served as national counsel to the Bush-Cheney presidential campaign; He played a central role in the 2000 Florida recount; He also represents the campaigns and leadership PACs of numerous members of the Senate and House, as well as the Republican National Committee, National Republican Senatorial Committee and

National Republican Congressional Committee; His expertise is more in campaign finance.

Cleta Mitchell-Partner in the Washington, D.C. office of Foley & Lardner LLP; She advises corporations, nonprofit organizations, candidates, campaigns, and individuals on state and federal election and campaign finance law, and compliance issues related to lobbying, ethics and financial disclosure; Ms. Mitchell practices before the Federal Election Commission and similar federal and state enforcement agencies; Her expertise is more in campaign finance law.

Mark Braden-Of counsel at Baker & Hostetler; He concentrates his work principally on election law and governmental affairs, including work with Congress, the Federal Election Commission, state campaign finance agencies, public integrity issues, political broadcast regulation, contests, recounts, the Voting Rights Act, initiatives, referendums and redistricting; His expertise is mainly outside of the voter fraud area.

**Deliberative Process
Privilege**

To: Peggy Sims
From: Tova Wang
Re: Working Group Recommendations
Date: November 12, 2005

*Wendy R. Weiser, Associate Counsel in the Democracy Program at the Brennan Center for Justice at NYU School of Law and an expert in federal and constitutional law, has done a great deal of research, writing, speaking, and litigating on voting rights and election law issues. As part of the Brennan Center's wide ranging activities in the area of democracy, Ms. Weiser is currently overseeing an analysis and investigation of recent allegations of voter fraud throughout the country.

*Barbara Arnwine is Executive Director of the Lawyers Committee for Civil Rights Under Law, an organization that for four decades has been at the forefront of the legal struggle to secure racial justice and equal access to the electoral process for all voters. Notably, Ms. Arnwine and the organization have led the Election Protection program for the last several years, a nationwide grassroots education and legal effort deploying thousands of volunteers and using a nationally recognized voter hotline to protect voters' rights on election day.

*Daniel Tokaji, professor and associate director of the Election Law Center at the Moritz College of Law at the Ohio State University, is one of the nation's foremost experts in election law and reform and ensuring equality in the voting system. Professor Tokaji frequently writes and speaks on democracy related issues at academic and practitioner conferences, on such issues as voting technology, fraud, registration, and identification requirements, as well as the interplay between the election administration practices and voting rights laws.

Donna Brazile is Chair of the Democratic National Committee's Voting Rights Institute, the Democratic Party's major initiative to promote and protect the right to vote created in response to the irregularities of the 2000 election, and former Campaign Manager for Gore-Lieberman 2000 (the first African American to lead a major presidential campaign.) Brazile is a weekly contributor and political commentator on CNN's Inside Politics and American Morning, a columnist for Roll Call Newspaper and a contributing writer for Ms. Magazine.

Wade Henderson is the Executive Director of the Leadership Conference on Civil Rights (LCCR) and Counsel to the Leadership Conference on Civil Rights Education Fund (LCCREF), an organization at the forefront of defending voting rights for the last fifty years. Prior to his role with the Leadership Conference, Mr. Henderson was the Washington Bureau Director of the National Association for the Advancement of Colored People (NAACP)

Robert Bauer is the Chair of the Political Law Practice at the law firm of Perkins Coie, National Counsel for Voter Protection, Democratic National Committee, Counsel to the Democratic Senatorial and Congressional Campaign Committees and Co-Author, Report

of Counsel to the Senate Rules and Administration Committee in the Matter of the United States Senate Seat from Louisiana in the 105th Congress of the United States, (March 27, 1997). He is the author of *United States Federal Election Law*, and one of the foremost attorneys in the country in the area of federal/state campaign finance and election laws.

Laughlin McDonald has been the executive director of the Southern Regional Office of the ACLU since 1972 and as the Director of the ACLU Voting Rights Project, McDonald has played a leading role eradicating discriminatory election practices and protecting the gains in political participation won by racial minorities since passage of the 1965 federal Voting Rights Act. During the past two decades, McDonald has broken new ground by expanding ACLU voting rights cases to include representation of Native Americans in various western states, and written innumerable publications on voting rights issues.

Joseph E. Sandler is a member of the firm of Sandler, Reiff & Young, P.C., in Washington, D.C., concentrating in campaign finance and election law matters, and general counsel to the Democratic National Committee. As an attorney he has handled campaign finance and election law matters for Democratic national and state party organizations, Members of Congress, candidates and campaigns. He served as general co-counsel of the Association of State Democratic Chairs, as general counsel for the Democratic Governors' Association and as counsel to several state Democratic parties.

Cathy Cox is serving her second term as Georgia's Secretary of State, having first been elected in 1998. In 2002 she earned re-election with over 61 percent of the vote, winning 146 out of 159 counties. Because of Secretary Cox's efforts Georgia has become a national leader in election reform. Her initiative made Georgia the first state in America to deploy a modern, uniform electronic voting system in every county



Gracia Hillman/EAC/GOV

08/19/2005 12:06 PM

To Thomas R. Wilkey/EAC/GOV@EAC

cc "Paul DeGregorio" <pdegregorio@eac.gov>, "Ray Martinez" <rmartinez@eac.gov>, "Karen Lynn-Dyson" <klynn-dyson@eac.gov>, Juliet E.

bcc

Subject Fw: Eagleton

Tom: Please put this on the agenda for discussion when we get together on Friday in Denver.

Sent from my BlackBerry Wireless Handheld
Paul DeGregorio

From: Paul DeGregorio
Sent: 08/19/2005 11:06 AM
To: Gracia Hillman; Raymundo Martinez; Donetta Davidson; twilkey@nycap.rr.com; Juliet Thompson; Karen Lynn-Dyson; Carol Paquette
Subject: Eagleton

In his note regarding the Eagleton contract, Hans has raised some of the same concerns I raised from the beginning of any discussions I had regarding this contract with our staff, and at our first formal meeting with Eagleton. In reviewing their work product from time to time, I continue to have concerns about a lack of balanced input and have repeatedly voiced them with staff and with Eagleton. I did this when the initial peer review group was proposed and again during their presentation at our meeting in Pasadena (the outreach slide in their public presentation showed outreach to seven groups, of which only one could be considered conservative-leaning). Now, as I have just had the opportunity to read their July progress report, it appears that Eagleton seems to be going into a larger analysis of the voter fraud issue than was authorized in the contract. My suspicion is that Dan Tokaji is injecting his views into this to dismiss or diminish the concerns some people may have about voter fraud. I could be wrong, but his previous writings lead me to believe otherwise.

I only found one mention of voter fraud in the contract with Eagleton. It is in Section 3.5 regarding provisional voting, where it discusses "minimizing opportunity for voter fraud." Yet, on page 4 of the July progress report from Eagleton, in describing their work plan for the next month it states: "we will expand upon vote fraud research and examine further the relationship between instances of vote fraud and ensuing election reforms." This clearly seems to be going beyond the mandate we gave them as I thought they were going to be looking at voter fraud relating to provisional voting (as the contract calls for), not voter fraud as it relates to election reforms. While voter fraud was never mentioned in the contract regarding the voter ID issue, page 5 of their July report indicates that their narratives "will include an appraisal of the prevalence and nature of vote fraud." In addition to this, page 6 describes a look into the "relationship between voter ID regime and vote fraud."

Voter fraud is clearly an issue that is perceived differently from the Right and from the Left. I have struggled with determining what a clear definition of voter fraud is myself, and therefore want to obtain various perspectives and good analysis on this issue before I formulate a solid conclusion in my mind. It has been my understanding all along that the whole voter fraud/voter intimidation issue is going to be studied by the EAC using a balanced group of consultants--not Eagleton and Moritz, who are likely to focus on just on the number of prosecutions of voter fraud, rather than the complaints made or the fact that many election officials are frustrated that some prosecutors don't take their complaints about voter fraud seriously. I am not convinced at this point that we will get a balanced and objective study from Eagleton/Moritz on voter fraud. I am puzzled on why they seem to be expending a significant portion of their time on this and would want to know if we somehow authorized them to do more research into the voter fraud issue.

On page 7 of their July report Eagleton indicates that communications with the EAC on the Peer Review

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Group "were not clear or timely." I would like to know what this refers to. Also, I may have missed it, but I do not recall seeing the final list of who is serving as the Peer Review group.

The August 15th copy of the July report that I received from Karen did not include the attachment of the financial report of expenses incurred. I would like to see that attachment.

Outside of our NIST work, this contract represents our largest single outside expenditure of our operational funds. Any single expenditure of \$500,000+ needs to be closely monitored. I, for one, am not going to sign off on any report that appears to have been written from a biased viewpoint, especially one that doesn't appear to be interested in hearing from conservative organizations or right-leaning researchers, or seems to minimize any input from them. I've already had questions from congressional staff and others on why we picked Eagleton and Moritz, as they are perceived by some as biased against Republicans. I assured the critics that we have insisted all along on an objective study from Eagleton. An unbalanced or biased study from them will not only hurt my credibility, but also that of the EAC. I'm not suggesting that we stop their work, but I do want Tom and Julie to inform them in no uncertain terms that we will not accept a report that does not seriously consider all viewpoints on provisional voting and the voter ID issue, and that any study or interpretations they present to us reflect a diversity of opinions on these subjects. We also need for staff to determine whether their considerable work into the voter fraud area is authorized in the contract. We should not be paying for and receiving work we did not authorize.

The contract clearly calls for "alternative approaches" on voter ID requirements and "alternatives" on provisional voting. I agreed to support this contract to Eagleton because I was assured that we would receive a variety of approaches from their work, and not just those from a liberal perspective.

Paul DeGregorio
Vice Chairman
US Election Assistance Commission
1225 New York Ave, NW
Suite 1100
Washington, DC 20005
1-866-747-1471 toll-free
202-566-3100
202-566-3127 (FAX)
pdegregorio@eac.gov
www.eac.gov

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Karen Lynn-Dyson/EAC/GOV

08/15/2005 04:43 PM

To Thomas R. Wilkey/EAC/GOV@EAC, Adam
Ambrogio/EAC/GOV@EAC, Juliet E.
Thompson/EAC/GOV@EAC
cc Raymundo Martinez/EAC/GOV@EAC

bcc

Subject Fw: Eagleton Institute of Politics - July 2005 - Monthly
Progress Report

FYI-

Karen Lynn-Dyson
Research Manager
U.S. Election Assistance Commission
1225 New York Avenue , NW Suite 1100
Washington, DC 20005
tel:202-566-3123

— Forwarded by Karen Lynn-Dyson/EAC/GOV on 08/14/2005 04:42 PM —



"Lauren Vincelli "
<Vincelli@rutgers.edu>

08/15/2005 03:01 PM

Please respond to
Vincelli@rutgers.edu

To klynndyson@eac.gov

cc "Tom O'Neill" [REDACTED]
rmandel@rci.rutgers.edu, john.weingart@rutgers.edu

Subject Eagleton Institute of Politics - July 2005 - Monthly Progress
Report

Ms. Dyson,

Attached please find the July 2005 Progress Report for the project entitled, "Contract to Provide Research Assistance to the EAC for the Development of Voluntary Guidance on Provisional Voting and Voter Identification Procedures." If you have any questions regarding any part of this document please contact Tom O'Neill at [REDACTED]

The financial reporting for this project is performed by the Division of Grant and Contract Accounting at Rutgers University. A copy of this report was not made available to us in an electronic format. Hard copies of the Progress Report and Financial Report have been Fedex'ed to you this afternoon and should arrive to your attention tomorrow morning. Please let me know if you do not receive this package by tomorrow afternoon.

Thank you for your time, have a great evening.

Best,
Lauren Vincelli

Lauren Vincelli
Business Assistant, Eagleton Center for Public Interest Polling
Eagleton Institute of Politics, Rutgers University
Carriage House, 185 Ryders Lane

008344

New Brunswick, NJ 08901
Phone: (732) 932-9384, ext. 237
Fax: (732) 932-1551



ProgressReport_JULY2005_EagletonInst.pdf



EAGLETON INSTITUTE OF POLITICS

***Contract to Provide Research Assistance to The EAC
For the Development of Voluntary Guidance on
Provisional Voting and Voter Identification Procedures***

**MONTHLY PROGRESS REPORT
JULY 2005**

For
UNITED STATES ELECTION ASSISTANCE COMMISSION
1225 New York Avenue N.W., Suite - 1100
Washington, DC 20005

August 15, 2005

Prepared by:
Eagleton Institute of Politics
Rutgers, The State University of New Jersey
191 Ryders Lane
New Brunswick, NJ 08901-8557

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OUTLINE

- Introduction
- Provisional Voting
 - Task 3.4
- Voter Identification Requirements
 - Task 3.10
 - Task 3.11
- Project Management
 - Task 3.1
- Financial Report

INTRODUCTION


This report describes our progress from July 1 through July 31, 2005. It includes brief descriptions of key tasks; progress made; challenges encountered or anticipated; milestones reached; and projections for work to be completed in the coming month.

The effort this month continued to focus on research for the analysis and alternatives paper, including the compilation of Provisional Voting statutes, regulations, and litigation from the 50 states. We also prepared and delivered testimony at the EAC's regular monthly meeting in Pasadena on July 28.

The data collection, analysis, and compilation are all on schedule. Because of delays in agreeing on the composition of the Peer Review Group with EAC, however, the actual completion and submission of the analysis and alternatives paper to the EAC will most likely be delayed about a week beyond the target date in the work plan. We are scheduled to discuss the draft paper and guidance document prior to submission, with the EAC on September 6, and the final draft cannot be completed until several days after that date.

The document report is divided into 4 sections that cover: Provisional Voting, Voter Identification Requirements, Project Management, and the Financial Report. Each section references the specific tasks described in paragraph 3 of the contract.

Please direct any questions or comments about this report to Tom O'Neill at:



PROVISIONAL VOTING

Tasks 3.4 – 3.9 in our contract relate to provisional voting. Work on the first of these must be complete before proceeding to later tasks. Task 3.4 was completed this month.

Task 3.4: Collect and analyze state legislation, administrative procedures, and court cases. Understand the disparities and similarities of how provisional voting was implemented around the country.

LEGISLATION, REGULATIONS, AND LITIGATION

The research team at the Moritz College of Law has the lead responsibility for the collection and analysis of legislation, administrative procedures and litigation. This information constitutes the compendium of legislation, administrative regulations, and case law called for under this task. It also will provide a base of understanding for the analysis of states' actual experience with provisional voting in 2004, for which the Eagleton team has lead responsibility.

Description: The Moritz team has created a 50-state chart to summarize information on provisional voting, compiled statutes, case law and administrative procedures regarding Provisional Voting.

Progress: The 50-state (plus District of Columbia) chart created to collect data on provisional voting is complete. We have collected the statutes for all states. State by state summaries of provisional voting have been written for 47 states and D.C. A memorandum summarizing provisional voting litigation is complete. The collection of the documents associated with the litigation is nearing completion.

Challenges: The variety in the form of provisional voting legislation from state to state makes creating a snap-shot view across states a challenge.

Work Plan: The remaining 3 state summaries of provisional voting will be completed by August 8. Analysis of all the information, data, and survey results concerning provisional voting data will be performed in August.

PREPARATION FOR AND EXPERIENCE WITH PROVISIONAL VOTING

The Eagleton team has researched and compiled a narrative of each state's experience with provisional voting in 2004. At the end of July the survey of 400 local election officials was nearing its end, and – as of this writing – is now complete with an analysis and report in draft form. We will rely on the survey results to improve our understanding of actual practice in administering provisional voting, including the steps local officials took to prepare for the election.